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THE SUPREME COURT

OF THE UNITED STATES
FILED
FEB 3 1906
JAMES P. McKENNEY,
Clerk.

THE MICHIGAN CENTRAL
RAILROAD COMPANY
vs.
PERRY F. POWERS, Auditor
General of the State of Mich-
igan.

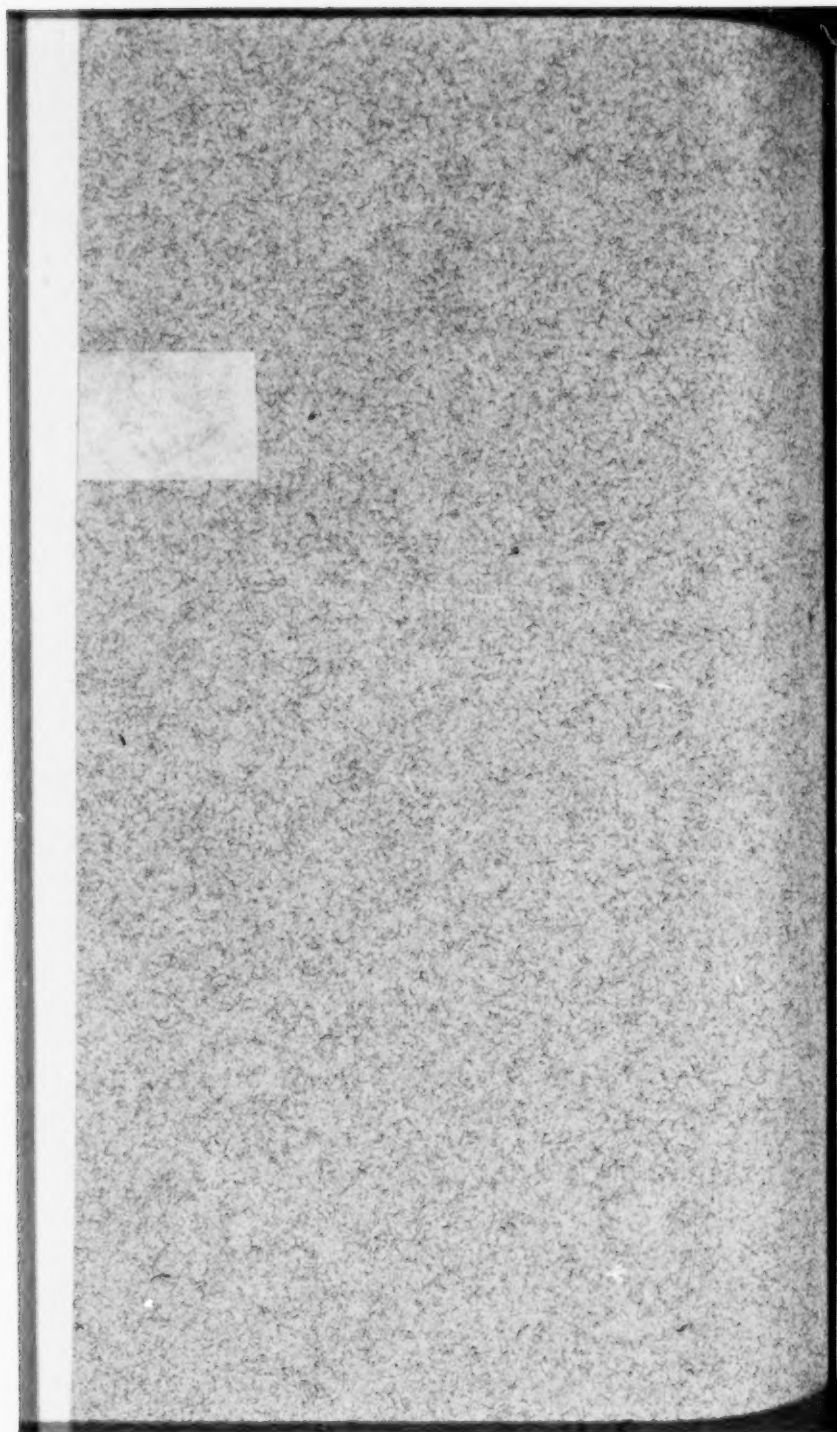
No. 397.

BRIEF IN BEHALF OF THE COMPLAINANT.

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The statute of Michigan under which the taxes which are the subject of this suit were levied is Act No. 173 of the Laws of 1901, the provisions of which involved in the suit are copied in Appendix A to this brief.

The following is a summary of its provisions:

It applies to railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies.

The State Board of Tax Commissioners are constituted a State Board of Assessors, whose duty it is to assess the property of the companies to which the act applies, at its true cash value, on the second Monday of April. On the third Monday of December the Board is to meet at the capitol at Lansing to review their assessment, and any company or person has the right to appear and be heard as to the valuation of the property of any company, and the Board may correct the assessment in such manner as in their judgment will make the valuation just and ~~equitable~~ ^{equal}.

The clerk of each county of the State, not later than the 1st of November, is to report to the State Board of Assessors the equalization made by the Board of Supervisors of the county of the assessment of the several townships, which report shall contain a statement of the amount of ad valorem taxes to be raised in the several municipalities in said county for state, county, municipal, township, school and other purposes, and a statement of the aggregate valuation of the property in each of said municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. The supervisor or other assessing officer of cities and villages governed by charters which provide for the collection of ad valorem taxes which are not reported to the board of supervisors for the purposes of equalization or review are to report to said board all ad valorem taxes raised in said municipalities.

After the receipt of said reports the State Board of Assessors "shall ascertain and determine the average rate of taxation of the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with

the method by which such average rate was ascertained and determined," and the "said Board shall tax the property of the several companies as assessed by it at the rate as determined by it."

The tax is to be extended upon the assessment roll opposite the descriptions of the property of the companies.

The taxes are made payable to the State Treasurer on the 1st of March following the levy. Taxes not paid before the 1st of April bear interest at the rate of one per cent a month, and are made a lien upon all the properties of the companies, real, personal and mixed, from the time of their extension until paid. The Board are required to annex their warrant to the roll commanding the Auditor General to collect the taxes by levy and sale of the property of the companies.

The statute provides that, "No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any Court of this State on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this state is in accordance with the constitution and statutes of this state."

The taxes are to be applied, "in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the

state debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund."

The State Board of Assessors proceeded under the act for the collection of the taxes for the year 1902, assessing the property of the companies at what they believed to be its true cash value. Acting under the provisions of said Section 12 of the act, to ascertain and determine the average rate of taxation for the year 1902 levied upon other property upon which ad valorem taxes were assessed for state, county, township, school and municipal purposes, they believed it to be their duty to determine whether such other property had been assessed at its true cash value, and proceeded accordingly and did ascertain and determine that such property had not been assessed by the assessors thereof at its true cash value, but that it had been assessed at greatly less than its true cash value, and determined the true cash value of said property to be the sum of \$1,715,000,000, making thereby the amount of the assessed valuation of said property as determined by them more than the amount of valuation as assessed by local assessors, as shown by the reports made to said Board by the clerks of the Boards of Supervisors, and by said determination the Board ascertained and determined the rate of taxation to be levied upon the properties of said companies to be \$13.68905 per thousand dollars of the said assessed valuation thereof, and levied said rate of taxation upon the property of said companies. The tax roll made upon that basis, with the proper warrant of the Board, was delivered to the Auditor General for collection. Thereupon application was made to the Supreme Court of the State by the Board of Education of the City of Detroit for a writ of Mandamus to said State Board of Assessors to require them to redeter-

mine the rate of taxation to be levied upon the property of said companies, by taking for such determination the assessed value of the other property as the same had been made by the local assessors.

The Supreme Court granted a Writ of Mandamus, holding that under the provisions of said Act 173 the said State Board of Assessors have no authority to thus equalize the assessment of said other property, and that their duty in determining the rate of taxation to be levied upon the property of said companies was to take the valuation of said other property *at the assessments made thereof by the local assessors*.

The Board of Education of Detroit vs. State Board of Assessors, 133 Mich., 116.

Acting under the direction of the Supreme Court, the State Board of Assessors re-determined the rate of taxation levied upon said other property for state, county, township, school and municipal purposes on the basis of said assessment of the said property made by the local assessors, and thereby made the rate of taxation to be levied upon the property of said companies \$16.55329 per thousand dollars upon the said assessed valuation thereof for said taxes; a new assessment roll was made by said Board with its proper warrant annexed thereto for the collection of said taxes, and was delivered to the Auditor General. To stay the collection of said taxes the suit is brought.

It is contended by the plaintiff that said taxes are unlawful and invalid, for the reason that said Act No. 173 and the proceedings taken to levy and collect the taxes, deprive the plaintiff of its property without due process of law, and deny to it the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment

to the Constitution of the United States, and that they also violate the provisions of the constitution of the State of Michigan.

Prior to bringing the suit, the plaintiff paid into the State Treasury the amount which would have been levied against the plaintiff for the taxes of the year 1902 under the laws providing for the taxation of railroad companies, as said laws existed prior to the adoption of said Act No. 173.

It is an admitted fact that the matter in dispute in the suit exceeds the sum of \$2,000, exclusive of interest and costs.

I.

The Court has jurisdiction of the case to enjoin the collection of the taxes levied against the plaintiff's property.

1st. The case is within the decisions which hold that whenever an officer, by virtue of his position under a state government by his acts is doing that by which a person is deprived of life, liberty or property without due process of law, and is denied the equal protection of the laws, he acts without authority and the Federal Courts have jurisdiction over him personally to restrain his acts.

Prout vs. Starr, 188 U. S., 537, at 542, 543,

Smyth vs. Ames, 169 U. S., 466, at 518, 519,

Tindal vs. Wesley, 167 U. S., 204, at 220,

Chicago &c. R. R. Co. vs. Chicago, 166 U. S., 226, at 233, 234,

Scott vs. Donald, 165 U. S., 58, at 67, 68, 69, 70,

Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 362, at 389,

390, 394, 395,

In re Tyler, 149 U. S., 164, at 190, 191,

Neal vs. Delaware, 103 U. S., 370, at 397,

Ex parte Virginia, 100 U. S., 339, at 346, 347.

2nd. Railroad companies are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, and the denial of the equal protection of the laws.

Covington & Lexington Turnpike Co. vs. Sandford, 164 U. S., 578, at 592,
 Gulf &c. R. R. Co. vs. Ellis, 165 U. S., 150, 154,
 Kentucky R. R. Tax Cases, 115 U. S., 321, at 336, 337,
 Smyth vs. Ames, 169 U. S., 466, at 522.

3rd. By Section 13 of said Act 173 under which the tax is levied, the tax is made a lien upon all the property of the plaintiff, both real estate and personal property, and a warrant is attached to the tax roll by which the Auditor General is commanded to levy upon and sell the plaintiff's properties, both real and personal, to satisfy the taxes.

By these proceedings a cloud is cast upon the title to the plaintiff's real estate.

It is within the clearly recognized jurisdiction of the Federal Courts to restrain the collection of invalid taxes where by the provisions of the law under which they are levied *they become a lien upon the real property of the party against whom they are levied and a cloud upon his title.* It is within the equitable jurisdiction of the Court to remove clouds upon title to real property. The Court acts in such cases enjoining the collection of invalid taxes whereby proceeding to levy the tax a cloud is cast upon the title to real estate, and the remedy at law is held to be inadequate.

Union Pacific R. R. Co. vs. Cheyenne, 113 U. S., 516, at 525,
 526,
 Ogden vs. Armstrong, 168 U. S., 224, at 237, 238,
 Wilson vs. Lambert, 168 U. S., 611, at 612,

Lyon vs. Alley, 130 U. S., 177, at 187,
 Illinois Cent. R. R. Co. vs. Adams, 180 U. S., 28, at 35,
 Northern Pacific R. R. Co. vs. Walker, 148 U. S., 391,
 Lindsay vs. Shreveport Bank, 156 U. S., 485,
 Allen vs. B. & O. R. Co., 114 U. S., 311,
 Milwaukee vs. Koeffler, 116 U. S., 219, at 223, 225,
 Dows vs. City of Chicago, 11 Wall., 108, at 110, 112,
 Hannewinkle vs. Georgetown, 15 Wall., 547, at 548, 549,
 Shelton vs. Platt, 139 U. S., 591, at 594, 595,
 Cummings vs. National Bank, 101 U. S., 153, at 157,
 Osborn vs. United States Bank, 9 Wheat., 738, at 841,
 State Railroad Tax Cases, 92 U. S., 575, at 614,
 Cooley on Taxation, p. 780-782 and Note (2nd Ed.)

The same equity jurisdiction has been maintained in the State of Michigan prior to the adoption of the recent statute of the state which provides for a proceeding in Court in which the taxpayer is brought into Court and has opportunity to defend before any sale of real estate can be made for the collection of taxes levied thereon.

Palmer vs. Rich, 12 Mich., 414, at 418, 419,
 Scofield vs. City of Lansing, 17 Mich., 437, at 447, 448,
 Hoyt vs. City of East Saginaw, 19 Mich., 39, at 47,
 Kinyon vs. Duchene, 21 Mich., 498, at 501,
 Bristol vs. Johnson, 34 Mich., 123, at 124,
 Marquette &c. R. Co. vs. Marquette, 35 Mich., 504,
 Frost vs. Leatherman, 55 Mich., 33, at 37,
 Alger vs. Slaght, 64 Mich., 589, at 590.

4th. It has been contended in behalf of the defendant that the plaintiff has an adequate remedy at law, by payment of the taxes under protest to the Auditor General as collecting officer, and an action against him for recovery of the money paid, citing the following decisions:

Elliott vs. Swartwout, 10 Pet., 137.

Bend vs. Hoyt, 13 Pet., 263.

Greely vs. Thompson, 10 How., 225.

Philadelphia vs. The Collector, 5 Wall., 720.

Dows vs. City of Chicago, 11 Wall., 108.

Arkansas Building & Loan Association vs. Madden, 175 U. S.,
269.

In all these cases the levy was made upon the personal property only, and there was no lien for the tax created by the proceedings upon the real property, and no cloud was cast on the title to real estate. Therefore the ground of the jurisdiction of a court of chancery in the removal of a cloud to title to real estate did not exist in the cases. The decisions have no application to the case at bar, in which the jurisdiction of the Court is based distinctly upon the ground of removal of cloud upon title to real estate, which by the terms of the statute and the proceedings to levy the tax is created upon the plaintiff's real property.

In no case, to our knowledge, in this Court, wherein it was sought to enjoin the collection of taxes upon the ground of prevention or removal of cloud upon the title to real property has jurisdiction been denied, where the amount involved in the suit was sufficient to give the Court jurisdiction.

In *Northern Pacific Railroad Co. vs. Walker*, 148 U. S., 391, a bill was filed in the Circuit Court of the United States against the county auditors of twelve counties, praying for a decree adjudging certain assessments and taxes levied upon lands in each of said counties to be illegal and void and a cloud upon the complainant's title, and that the defendants and each of them be restrained from selling or attempting to sell said lands, or any portion thereof.

The case proceeded to a decree dismissing the bill for want of equity, and was then carried by appeal to the Circuit Court of Appeals for the Eighth Circuit

Certain questions were certified by the Court of Appeals to the Supreme Court, and upon a certiorari the whole record was sent up to the Supreme Court for consideration. The latter Court disposed of the case, saying (page 392): "The record does not show that the amount of the assessments and taxes, forming the subject of the litigation, levied in either or all of the counties, exceeded the sum of \$2,000; and even if this had been so as to the aggregate, the defendants could not have been joined in a single suit, and the jurisdiction thus been sustained. Upon the face of the record, therefore, the Circuit Court was without jurisdiction. * * * But as perhaps by amendment the bill might be retained as to some one of the defendants, we will not direct its dismissal."

The case was thereupon remanded to the Circuit Court, with a direction for further proceedings in conformity with the opinion.

In this case the Court distinctly recognized the jurisdiction of the Court to enjoin the collection of the taxes, on the ground of preventing or removing cloud upon title to lands, had the amount of the taxes in any county been sufficient to give the Court jurisdiction.

In *Lindsay vs. Shreveport Bank*, 156, U. S., 485, suit was brought in the United States Circuit Court of Louisiana, at law, to have the amount of the assessment of the shares of defendant's capital stock modified and reduced. The Circuit Court dismissed the suit upon the express ground that the remedy was in equity and not at law.

The cases above cited show that the Court has enjoined the collection of taxes where the general jurisdiction of the

Court was invoked to prevent a multiplicity of suits, and to prevent irreparable injury, and to remove a cloud upon the title to real estate.

5th. The statute under which the tax is levied does not provide any remedy at law by a payment of the tax under protest and suit to recover the money so paid.

The tax is a state tax, and by Section 13 of the statute is required to be paid to the State Treasurer, and goes into the treasury of the state. A suit to recover the money so paid would be a suit against the state, to recover moneys received by the State. It has been many times decided by the Supreme Court of the state that the state cannot be sued without its consent.

Auditor General vs. Bay County Supervisors, 106 Mich., 662, at 665,

Auditor General vs. Supervisors, 73 Mich., 182, at 183,

Auditor General vs. Treasurer, 73 Mich., 28, at 31,

Supervisors vs. Auditor General, 69 Mich., 1, at 4,

Supervisors vs. Auditor General, 68 Mich., 659, at 665,

Bresler vs. Butler, 60 Mich., 40, at 43,

Burrill vs. Auditor General, 46 Mich., 256, at 258,

Ambler vs. Auditor General, 38 Mich., 746, at 750,

Michigan State Bank vs. Hastings, Walk. Ch., 9, at 13,

Michigan State Bank vs. Hammond, 1 Doug., 527, at 536,

Board of Liquidation vs. McComb, 92 U. S., 531, at 541,

Railroad Co. vs. Tennessee, 101 U. S., 337, at 339,

Louisiana vs. Jumel, 107 U. S., 711, at 722-725,

Cunningham vs. Macon & C. R. C., 109 U. S., 446, at 450-456.

Article XIV, Section 5 of the Michigan State Constitution, provides that "No money shall be paid out of the treasury except in pursuance of appropriations made by law."

The money having gone into the state treasury by pay-

ment of the taxes it could not be paid out unless appropriation were made by the legislature for its payment.

Reeside vs. Walker, 11 How., 272, at 283, 290.

The general statute of Michigan under which ad valorem taxes are levied upon the properties within the state, not included within said Act No. 173, contains a provision by which payment of such taxes may be made under protest to the collector and a suit be brought against the township to recover money so paid (1 Compiled Laws, 1897, Sec. 3876) but the provision applies only to taxes levied under such general statute, and does not apply to taxes levied under said Act No. 173.

Taylor vs. Town of Avon, 73 Mich., 604.

6th. It has been contended on the part of the defendant that the Court has jurisdiction only of the questions arising under the Constitution of the United States, and has not jurisdiction of the questions raised in the case under the constitution and statutes of Michigan independent of the Federal questions.

The case presented is that under the statute of Michigan and the proceedings to levy the tax the plaintiff is deprived of its property without due process of law, and is denied the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution.

There is no question but that the controversy thus presented under the constitution of the United States is real. In such case the Court has jurisdiction of the whole case, including the non-federal questions arising under the constitution and statutes of the state which do not involve the Federal questions, the appeal being from the Circuit Court

of the United States, and not from the Supreme Court of the state.

- 1 U. S. Comp. Laws, page 508, and Sec. 5, page 540.
Chappell vs. U. S., 160 U. S., 409, at 500.
Press Publishing Co. vs. Monroe, 164 U. S., 105, at 110, 111.
Scott vs. Donald, 165 U. S., 58, at 71-73.
Horner vs. United States, 143 U. S., 570, at 576, 577.
Giles vs. Harris, 189 U. S., 475, at 476.
Missouri vs. Dockery, 191 U. S., 165, at 171.

7th. It has been the contention on the part of the defendant, that the railroad company has a remedy by paying the tax and then presenting its claim to the Board of State Auditors to obtain a return of the money.

To determine that the tax was invalid and that the money paid on account of the tax should be returned, would require a decision that the tax was levied in violation of the provisions of the Constitution of the United States, and contrary to the constitution of the state, and would be indisputably the exercise of judicial power.

- Daniel vs. People*, 6 Mich., 381, at 388.
Underwood vs. McDuffee, 15 Mich., 361, at 368.
Risser vs. Hoyt, 53 Mich., 185, at 193.
Coburn vs. Virginia, 6 Wheat., 264, at 378, 384, 392.
Osborn vs. United States Bank, 9 Wheat., 738, at 819.
Tennessee vs. Davis, 100 U. S., 237, at 263, 264.
Starin vs. New York, 115 U. S., 248, at 257.
Pacific Railroad Removal Causes, 115 U. S., 2, at 11.

The judicial power of the state is exclusively vested in the Courts which are designated in the State Constitution by the following provisions, viz.:

"Article VI, Section 1. The judicial power is vested in one Supreme Court, in Circuit Courts, in Probate Courts

and in Justices of the Peace. Municipal Courts of civil and criminal jurisdiction may be established by the legislature in cities."

"Section 3. The Supreme Court shall have a general superintending control over all inferior courts, and shall have power to issue writs of error, habeas corpus, mandamus, quo warranto, procedendo, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only."

"Section 23. The legislature may establish courts of conciliation with such powers and duties as shall be prescribed by law."

"Section 27. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law."

The Supreme Court of the state has repeatedly decided that the judicial power of the state is vested in the Courts designated in the above provisions of the constitution.

Chandler vs. Nash, 5 Mich., 409, at 417.

Risser vs. Hoyt, 53 Mich., 185, at 192.

State Tax-Law Cases, 54 Mich., 390, at 408.

People vs. Salisbury, 134 Mich., 537, at 544.

In *Underwood vs. McDuffee*, 15 Mich., at page 368, Mr. Justice Campbell, delivering the opinion of the Court, says: "The judicial power, even when used in its widest and least accurate sense, involves the power to *hear and determine* the matters to be disposed of; and this can only be done by some order or judgment which needs no additional sanction to entitle it to be enforced. No action which is merely preparatory to an order or judgment to be rendered by some different body, can be properly termed judicial.

* * * It is the inherent authority not only to decide, but to make binding orders or judgments, which constitutes judicial power; and the instrumentalities used to inform the tribunal, whether left to its own choice or fixed by law, are merely auxiliary to that power, and operate on persons or things only through its action, and by virtue of it."

In *State Tax-Law Cases*, 54 Mich., at page 408, Mr. Justice Campbell says: "And it must not be forgotten that whatever judicial power exists at all, is by the express terms of the Constitution of Michigan vested in the Courts, and cannot be taken away from them, while that which is not judicial they are as expressly debarred from exercising, and it must be vested elsewhere. Our Constitution is peculiar in prohibiting one department from using the powers of another. It is not in the power of the legislature to make that judicial which is not so by nature."

In *Chandler vs. Nash*, 5 Mich., Mr. Justice Christiancy, delivering the opinion of the Court, says (page 417): "Sec. 1, Article VI, of the Constitution, declares: 'The judicial power is vested in one Supreme Court, in Circuit Courts, in Probate Courts, and in Justices of the Peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.' This, beyond all controversy vests the *whole* judicial power of the state in the Courts and officers named in this section, unless there be some further provision in the same Constitution, conferring upon some other Court or officer a part of such judicial power, or authorizing the legislature to confer it; and in the latter case, it can only be possessed or conferred by such further provision expressly, or by necessary implication, which would have the effect to take the case out of the general provision above quoted."

The following are the provisions of the Constitution relating to the State Board of Auditors, viz.:

"Article VIII, Section 1. There shall be elected at each general biennial election a secretary of state, a superintendent of public instruction, a state treasurer, a commissioner of land office, an auditor general, and an attorney general for the term of two years. They shall keep their offices at the seat of government and shall perform such duties as may be prescribed by law."

"Section 4. The secretary of state, state treasurer, and commissioner of the state land office shall constitute a board of state auditors to examine and adjust all claims against the state, not otherwise provided for by general law. They shall constitute a board of state canvassers, to determine the result of the elections for governor, lieutenant governor, and state officers, and all such other officers as shall by law be referred to them."

It was not the intention of the constitution to vest in this auditing board, composed of political officers, a judicial power to hear and determine a suit involving the constitutional questions presented in this case, and to render a judgment thereon against the state.

Fitch vs. Board of Auditors, 133 Mich., 178, at 183.

Whatever proceeding may be had before the board for auditing claims is in its nature a proceeding at law. No chancery jurisdiction is conferred upon the board. The constitution provides that the right of trial by jury shall remain to suitors. There is no provision by the constitution, or by any statute of the state for a jury to act upon claims presented to this board.

In respect to claims against the state, the power conferred by the constitution upon the board is the power of an auditing committee, for the examination and adjusting

of accounts or claims which, without judicial determination, are recognized as lawful. From the decisions of the board in allowing or disallowing claims against the state there is no appeal provided for by the constitution or the statute, and there is no supervision by the Supreme Court over the action of the board in such case, for the reason that the board is not a Court and its action is not the exercise of judicial power, and the discretion which it may exercise is not subject to control. This is fully established by the decisions of the Supreme Court.

People ex rel Dewey vs. Board of State Auditors, 32 Mich., 191,

Ambler vs. Auditor General, 38 Mich., 746, at 750, 751,

Ayers vs. State Auditors, 42 Mich., 422, at 428,

Detroit Free Press vs. State Auditors, 47 Mich., 135, at 144,

Warner vs. Board of State Auditors, 128 Mich., 500, at 501,

Allen vs. Board of State Auditors, 122 Mich., 324, at 328.

Where, by a statute, duties are imposed upon the board, other than the allowance of claims against the state, which duties are ministerial and to the performance of which parties are entitled, the Supreme Court may compel the board to act, but the power of supervision goes no further.

Ayers vs. State Auditors, 42 Mich., 422, at 428,

Detroit Free Press vs. State Auditors, 47 Mich., 135,

Board of Park Commissioners vs. Common Council, 28 Mich., 228, at 235,

International Contracting Co. vs. Lamont, 155 U. S., 303, at 308.

In Fitch vs. Board of Auditors, 133 Mich., 178, the legislature, by a joint resolution, created a board of auditors for auditing and allowing claims against two counties, and to apportion the claims to the counties for pay-

ment. The Court, holding the resolution unconstitutional, says (page 183): "The board of auditors created by this act are authorized to determine the validity and amount of claims presented to them, and to so apportion that amount that the property or taxpayers of said disorganized county must pay it. In other words, they not only make a binding determination, which is equivalent to a judgment, but they make an apportionment against the property or taxpayers without the sanction of a Court which is equivalent to an execution. This board of auditors does, in other words, all that a Court can do in the premises. The Constitution of Michigan, Article VI, Section 1, having vested judicial power in one Supreme Court, in the Circuit Courts, in Probate Courts, and in justices of the peace, clearly does not authorize the legislature to vest judicial power in tribunals of this character."

Whatever view may be taken of the power of the Board of State Auditors, or of any legal remedy which the plaintiff may have, it can not be deprived of the right to bring suit in the Federal Circuit Court under the Court's jurisdiction to remove the cloud upon the plaintiff's title to its real property.

The jurisdiction of the Federal Court is not affected by the fact that a legal remedy may exist in the State Court.

Smyth vs. Ames, 169 U. S., 466, at 516.

II.

The provisions of the Fourteenth Amendment, forbidding the State to deprive any person of life, liberty or property without due process of law, or to deny any person within its jurisdiction the equal protection of the laws, apply to proceedings adopted by the State for the levy and collection of taxes.

Upon this point the decisions are numerous and harmonious.

No general definition has been adopted of a denial of the equal protection of the laws which is intended to define the cases which come within this provision of the constitution. Each case is left to be determined upon its own facts, and upon the statutes and proceedings in the different states under which the claim is made that the protection which is afforded to a part of the persons within the jurisdiction of the State is denied to others; but the decisions have declared certain definite principles which control the determination of the particular cases.

(a) The provision for the equal protection of the laws is to be liberally construed to carry out its purposes.

Strauder vs. W. Virginia, 100 U. S., 303, at 307.

Boyd vs. United States, 116 U. S., 616, at 635.

Gulf & c. R. Co. vs. Ellis, 165 U. S., 150, at 153, 154.

(b) Equal protection of the laws means the protection of equal laws.

The inquiry is not limited to the operation of a single law. The question is whether, under the different and several laws of the State, a protection of rights is afforded to a part of the persons within the state which is denied to others.

Yick Wo vs. Hopkins, 118 U. S., 356.

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 559.

(c) The cases which have been passed upon by the Courts show that wherever provisions are made by the

laws of the state which give protection to one class of persons against the deprivation of life, liberty or property, and those provisions are withheld from other persons *who in like conditions and for the same reasons are in need of like protection*, there is class legislation which contravenes the equal protection of the laws.

Barbier vs. Connolly, 113 U. S., 27, at 31.

Hayes vs. Missouri, 120 U. S., 68, at 71.

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 558,
559, 560.

(d) The levy and collection of taxes by such class legislation is a denial of the equal protection of the laws.

Where by provisions of statutes which are designed for the personal protection of the taxpayer against the levy upon him of an unjust, unequal and heavier burden of taxation than he ought to bear, and the operation of which does give such protection to a portion of the taxpayers, but such provisions are withheld from other taxpayers who for the same reasons have need of and who would receive by such provisions like protection, and are subjected, or may be subjected to unjust, unequal and heavier taxation for want of such protection, a case is presented of the denial of equal protection of the laws.

It is recognized that inequalities will exist in taxation arising from the fact that it is not practicable to apply the same provisions of the tax law to all the different conditions arising in taxation and secure equal results.

Inequalities which arise from such causes are tolerated and submitted to, but inequalities in burdens of taxation imposed upon persons who are in like conditions, *and which inequalities arise from different provisions of the law itself, and can be foreseen and provided against*, con-

stitute discrimination which is a denial of equal protection.

Justice Field in Railroad Tax Cases, 13 Fed., 722, at 733, 734.
 County of Santa Clara vs. Southern Pac. R. Co., 18 Fed., 385, at 398, 399,
 Santa Clara County vs. So. Pacific R. Co., 118 U. S., 394, at 396,
 Charlotte &c. R. Co. vs. Gibbes, 142 U. S., 386, at 391,
 Kentucky R. R. Tax Cases, 115 U. S., 321, at 337,
 Stearns vs. Minnesota, 179 U. S., 223, at 262,
 Travellers' Ins. Co. vs. Connecticut, 185 U. S., 364, at 366,
 Bell's Gap R. Co. vs. Pennsylvania, 134 U. S., 232, at 237,
 Delaware, L. & W. R. Co. vs. Pennsylvania, 198 U. S., 341,
 Louisville &c. Ferry Co. vs. Kentucky, 188 U. S., 385, at 398,
 Gulf &c. R. Co. vs. Ellis, 165 U. S., 150, at 154,
 Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 558, 563,
 Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, at 110.

(e) *If the probable effect of the provisions of the statutes of the state is to produce the discrimination against persons which the equal protection of the constitution forbids, taxation by which such discrimination is made is unlawful.*

San Francisco National Bank vs. Dodge, 197 U. S., 70, at 78,
 Davenport Bank vs. Davenport, 123 U. S., 83, at 86,
 People vs. Weaver, 100 U. S., 539, at 544,
 Pelton vs. National Bank, 101 U. S., 143, at 145, 146,
 Cummings vs. National Bank, 101 U. S., 153, at 157,
 Hills vs. Exchange Bank, 105 U. S., 319.

(f) Under the Fourteenth Amendment the method for the assessment and collection of taxes provided by the State shall not be inconsistent with natural justice.

Turpin vs. Lemon, 187 U. S., 51, at 60.

III.

The equal protection of the laws is denied to the railroad companies in the provisions of said Act No. 173, by which the amount of taxes imposed upon them is determined.

1st. The provision of the statute is that "the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes," and, "said Board shall tax the property of the several companies as assessed by it at the rate as determined by it."

To thus determine the rate of taxation, the Board is to ascertain the total sum of all taxes of the then current year levied upon other property for state, county, township, school and municipal purposes, and the total sum of the assessed value of such other property for the year, and divide the former sum by the latter, and thus determine the rate.

In this manner the amount of the tax to be levied upon the railroad companies is determined by the amount of taxes which the counties, towns, school districts, cities and villages, by their action, shall determine to be raised for their local municipal purposes, *in addition to the amount which the State determines to raise in the same year for state purposes.*

2nd. A protection is furnished to other taxpayers of the state by the laws which provide a legislative determination, or judgment of the amount of taxes which ought to be imposed upon them, which determination or judgment is formed upon the consideration of the needs of the state,

or of the municipality, for which the taxes imposed are to be devoted, and the amount of the taxation required to provide for such needs, while such protection is withheld from the companies subjected to taxation under said Act No. 173.

The determination of the amount of taxes to be raised in any case, or for any purpose is a legislative determination. Taxes for state purposes are determined by the legislature; taxes for municipal purposes, including the purposes of counties, townships, school districts, cities and villages, are determined by the action of the boards, officials, councils or electors upon whom is conferred by the legislature of the state power to decide for what purpose and to what amount taxes may be raised.

In every case it is a determination by legislation made in view of the public or the municipal interests, and of the amount of taxes required to provide for those interests, and this legislative power is exercised by the officers chosen by and who represent those directly interested in the district taxed, or by the electors of the district.

In this manner other taxpayers of the state not subjected to taxation under said Act No. 173 are protected by the principle everywhere recognized as fundamental, viz.: the principle of self-taxation by the legislative action of representatives who are directly responsible to the taxpayers of the district in which the taxes are levied. *This is especially the fundamental principle of taxation in the State of Michigan.*

Cooley on Taxation, 61, 62, 63, 141, 142, 241, 242, (2nd Ed.)

Board of Park Commissioners vs. Detroit, 28 Mich., 228,
at 236, 241, 248,

Metropolitan Police vs. Board of Auditors, 68 Mich., 576,
at 579,

Blades vs. Water Commissioners, 122 Mich., 366, at 379.

Wilcox vs. Paddock, 65 Mich., 23, at 29,
 People vs. Hurlbut, 24 Mich., 44, at 87, 95.
 Cook Farm Co. vs. City of Detroit, 124 Mich., 426, at 429.
 Attorney General vs. Detroit Common Council, 58 Mich.,
 213, at 219, 220,
 United States vs. New Orleans, 98 U. S., 381, at 392,
 State Railroad Tax Cases, 92 U. S., 575, at 615,
 Heine vs. Levee Commissioners, 19 Wall., 655,
 Meriwether vs. Garrett, 102 U. S., 472, at 501, 515,
 Thompson vs. Allan County, 115 U. S., 550, at 555,
 Harward vs. St. Clair Drain Co., 51 Ill., 130, at 133, 134, 135,
 Parks vs. Board of Commissioners, 61 Fed., 436, at 437, 438.

Cooley on Taxation (2nd Ed.) pp. 61, 62, 63 and 65, says (pp. 61, 62) : "It is a general rule of constitutional law that a sovereign power conferred by the people upon any one branch or department of the government is not to be delegated by that branch or department to any other."

"This is a principle which pervades our whole political system, and when properly understood, admits of no exception. And it is applicable with peculiar force to the case of taxation. The power to tax is a legislative power. The people have created a legislative department for the exercise of the legislative power; and within that power lies the authority to prescribe the rules of taxation, and to regulate the manner in which those rules shall be given effect. The people have not authorized this department to relieve itself of the responsibility by a substitution of other agencies."

(Page 63) : "There is, nevertheless, one clearly defined exception to the rule that the legislature shall not delegate any portion of its authority. The exception, however, is strictly in harmony with the general features of our political system, and it rests upon an implication of

popular assent which is conclusive. This exception relates to the case of municipal corporations. Immemorial custom, which tacitly or expressly has been incorporated in the several State Constitutions, has made these organizations a necessary part of the general machinery of State government, and they are allowed large authority in matters of local government, and to a considerable extent are permitted to make the local laws."

(Page 65): "What is true of the State is equally true of the municipalities; that the power they possess to tax must be exercised by the corporation itself and cannot be delegated to its officers or other agencies. This rule applies to whatever is to be done which is legislative in its nature and involves the exercise of discretion, and a city, therefore, cannot delegate to an administrative officer the plan and extent of a municipal improvement for which it orders a tax, and if it should assume to do so, mere acts in affirmance afterwards would not supply to the officer the want of authority."

In *United States vs. New Orleans*, 98 U. S., 381, at page 392, the Court, by Mr. Justice Field, says: "The position that the power of taxation belongs exclusively to the legislative branch of the government, no one will controvert. Under our system it is lodged nowhere else. But it is a power that may be delegated by the legislature to municipal corporations, which are merely instrumentalities of the State for the better administration of the government of local concern."

In *Board of Park Commissioners vs. Detroit*, 28 Mich., 228, the legislature created a board, with power to select lands for a park for the City of Detroit, and to make estimates of expenditures annually for the improvement

and embellishment of the park. By the act the council of the city was required to provide for such expenditures by an issue and sale of bonds of the city. The Supreme Court held the act void upon the ground that it deprived the city of the power of local self-government in matters of local concern involving taxation. Mr. Justice Cooley, delivering the opinion of the Court, (page 248) says:

"In making contracts and creating debts for the city, the commissioners are in effect exercising a power of taxation, which is one of the highest attributes of sovereignty, and the distance between their former power to advise, and the power now claimed to compel, can only be adequately measured when it is perceived that the one belongs to the lowest grade of powers, while the power to tax is the highest that can exist in local municipal government. *No precedent entitled to respect can justify such a change of powers;* for, from the very dawn of our liberties the principle most unquestionable of all has been this: that the people shall vote the taxes they are to pay, or be permitted to choose representatives for the purpose." (The italics are ours).

In *Metropolitan Police vs. Board of Auditors*, 68 Mich., 576, Mr. Justice Campbell delivering the opinion of the Court (page 579) says:

"Under our system we can have no governments, general or special, that do not immediately represent a popular constituency, and no properly called governmental power can be lodged anywhere else. Our State Constitution has provided for local municipalities, embracing counties, cities, villages, townships and school districts, which it has been held mean such bodies of those names as were of a nature familiar and understood. The Legislature has power to confer upon townships, cities, villages and boards

of supervisors, local legislative and administrative powers such as are suited to their condition. But there is no other power mentioned in the Constitution for conferring similar public governing authority elsewhere, and these bodies are all created by popular elections. It was held in *Attorney Gen. vs. Detroit Common Council*, 58 Mich., 213, (24 N. W., Rep. 887), that the people could not be subjected to any delegated powers of government not exercised by their own representatives."

In *Blades vs. Water Commissioners*, 122 Mich., 366, the Legislature designated a board with power to annually estimate and report to the Common Council of Detroit the amount deemed by them a just proportion for the support of water works, and provided that such amount be assessed and levied upon the taxable property of the city, without submitting to the Board of Estimates of the city, or the taxpaying electors the question of levying such taxes. The act was held void by the unanimous opinion of the Supreme Court, delivered by Mr. Justice Grant, who uses the following language (pages 379, 380) :

"The method provided by this act for the support and maintenance of the waterworks is unconstitutional and void. While the provisions of the act are somewhat incongruous, it is apparent that it imposes compulsory taxation for purely local purposes. The board established by section 10, to fix water-rates, is also, by section 9, directed to prepare and transmit to the common council an estimate of the amount they deemed a just proportion of the total estimate for maintenance as a reasonable charge for furnishing water for domestic and other purposes therein specified. It is then made the duty of the common council to levy and assess upon the taxable property of the city the sum so fixed, and that it shall not be submitted to the

board of estimates or to a vote of the freemen of the city. The furnishing of water to the city and its inhabitants is a purely local matter, and it is not within the power of the legislature to compel taxation for that purpose, without the action of the freemen of the city or their chosen representatives. This question was fully and ably discussed in *People vs. Common Council of Detroit*, 28 Mich., 228 (15 Am. Rep., 202), which is the leading case in this state upon the subject. In an exhaustive opinion by Justice Cooley, where the attempt was made by the legislature to impose compulsory taxation for the maintenance of a park, he closes his discussion with the following pertinent language: 'No precedent entitled to respect can justify such a change of powers; for, from the very dawn of our liberties, the principle most unquestionable of all has been this: That the people shall vote the taxes they are to pay, or be permitted to choose representatives for the purpose.' "

"In a concurring opinion, Mr. Justice Campbell said:

" 'From time immemorial, every municipal government, properly so-called, and acting within its peculiar sphere, has acted through its common council, composed either of the burgesses or their representatives, subject in some cases to checks and vetoes, but not subject to legislation or final action in defiance of their own decisions. Their supremacy cannot be given up by themselves any more than it can be taken from them. No doubt the State can limit their powers, but it cannot transfer them.' "

"The question is there so thoroughly discussed that we deem it unnecessary to further consider the question."

In *Meriwether vs. Garrett*, 102 U. S., 472, Mr. Justice Field, at page 515, says:

"The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, *to be performed only by the legislature upon considerations of policy, necessity, and the public welfare.* In the distribution of the powers of government in this country into three departments, the power of taxation falls to the legislative. It belongs to that department to determine what measures shall be taken for the public welfare, and to provide the revenues for the support and due administration of the government throughout the State and in all its subdivisions. Having the sole power to authorize the tax, it must equally possess the sole power to prescribe the means by which the tax shall be collected, and to designate the officers through whom its will shall be enforced."

In *Harward vs. St. Clair Drain Co.*, 51 Ill., 130, at page 135, the Court uses the following language:

"The power of taxation is, of all the powers of government, the one most liable to abuse, even when exercised by the direct representatives of the people, and if committed to persons who may exercise it over others without reference to their consent, the certainty of its abuse would be simply a question of time. No person or class of persons can be safely entrusted with irresponsible power over the property of others, and such a power is essentially despotic in its nature, and violative of all just principles of government."

In *Parks vs. Board of Commissioners*, 61 Fed., 436, the Court uses the following language (page 438):

"Self-taxation, or taxation by officers chosen by or answerable to those directly interested in the district to be taxed, is inseparable from that protection of the right of property that is either expressly or impliedly guaranteed

by all written constitutions, under our system of government. Of all the powers of government the one most liable to abuse is the power of taxation. If placed in hands irresponsible to the people of the district to be taxed, its abuse is a mere question of time. If taxes may be forced on the people of a whole county, arbitrarily, by a few people signing a petition, it is plain that the people of the county, being the district to be taxed, have no voice in or control over the tax. There is no limit to the cost of these improvements, and the taxpayer is absolutely without means to check or control abuses that naturally follow arbitrary and irresponsible power over the property of others."

3rd. The proceedings to determine the ad valorem taxes to be paid by persons, whether natural or artificial, which are not included in Act No. 173, are the following:

(a) The amount of State tax is determined by the legislature.

Constitution, Art. XIV, Secs. 1 and 14.

(b) The amount of the county tax is determined by the Board of Supervisors, and the electors of the county.

Constitution, Art. X, Sec. 1,

1 Comp. Laws of 1897, Sec. 2484.

(c) The township taxes are determined by the electors of the township and the township board.

1 Comp. Laws, Secs. 2269, 2349.

(d) The amount of school district taxes is determined by the electors of the district or the school district board.

2 Comp. Laws, Secs. 4665, 4674.

(e) The amount of city and village taxes is determined by the city and village councils, or the electors of the cities and villages, as provided by their special charters, or the general law for the incorporation of cities and villages.

Constitution, Art. IV, Sec. 38,

Art. XV, Sec. 13,

1 Comp. Laws, Secs. 3290 to Sec. 3308 (as to cities),

1 Comp. Laws, Sec. 2852 to 2857, and Sec. 2873 (as to villages).

There being no dispute in reference to the points above cited upon the provisions of the constitution and statutes, the printing of them is not deemed necessary.

4th. In respect to all the above taxes, the amount is determined by the authorities imposing the tax by taking into account, first, *the public needs for which taxation is required to be made*, and, second, *the amount of money which ought to be raised to provide for those needs*.

There is an exercise of the judgment of those who are representatives of the taxpayers of said taxes in respect to the amount of taxes which ought to be raised, to provide for those interests for which the taxes are imposed.

In this manner the taxpayers are protected against arbitrary taxation and against taxation which is not, or may not be required to provide for such needs of the public as exist at the time the amount of the taxes is fixed upon.

5th. This protection granted under the laws to the other taxpayers of the State who are not taxed under said Act 173, both natural persons and corporations, is denied to the railroad companies by their taxation under said Act.

The tax levied upon the railroad companies is strictly a State tax, imposed for State purposes, *yet the legislature does not determine the amount of the tax, nor is it determined by any legislative action which considers the subject of the tax, nor is it determined by representatives who are responsible for their action to the stockholders of the railroad companies, who are the real taxpayers of the tax.*

6th. The legislature, by said Act, does not determine the amount of the tax.

To determine the amount of a tax is to designate the gross amount in money, in dollars, to be raised, or it is to determine the rate of taxation by stating the amount in cents, or in fractions of cents on the dollar of the value of the property to be taxed.

This is the determination which is made in respect to all ad valorem taxes raised in the state imposed in all cases which are not levied under said Act 173.

Said act, instead of determining the tax by stating the amount in money to be raised, or the rate upon the dollar of taxation, distinctly and only *designates a method by which the rate is to be determined.*

That method makes the determination by the various county, township, school district, city and village electors, boards and councils, of what the taxation in those municipalities shall be, the determination also of what shall be the rate of taxation of the railroad companies.

In this action of the municipal authorities, by which, in determining their own taxation, they determine the taxation of the railroad companies, no account whatever is taken, or can be taken, of the needs of the public in

respect to the purposes to which the taxes which their action imposes upon the railroad companies are to be devoted.

They do not consider that essential and fundamental feature of taxation.

The result is, the determination of the amount of tax to be paid by the railroad companies is, in respect to the action of the legislature, arbitrary; it is distinctly the result of chance, depending upon conditions, circumstances and actions of the municipalities which have no relation whatever to the purposes for which taxes are imposed upon railroad companies.

Every tax, for whatever purpose raised by a county, city, village, township or school district constitutes an act by the municipality in the determination of, and adds to the tax which the railroad companies must pay for a purpose which has no relation to the purposes for which such municipal tax was raised.

7th. Especial attention is called to the fact that the amount of the tax imposed upon railroad companies is not determined by the average rate of taxation levied upon other property for **GOVERNMENTAL PURPOSES**, and which amount and rate are under the control of the legislature.

The amount of tax to be imposed upon railroad companies is the average rate of taxation levied upon other property for "state, county, township, school and municipal purposes;" that is, taxes levied both for governmental purposes, and for the local, particular and individual purposes, convenience and enjoyment of the several municipalities.

These latter taxes constitute a very large part of the total which makes the average rate of taxation. The expenditures for which such taxes are levied are made entirely in the discretion of the municipalities.

To the extent that the rate of taxation laid upon the railroad companies is made up of the tax levied in the municipalities, other than for governmental purposes, *it is determined by the discretion and legislative determination of the municipal authorities which determine what the local expenditures and taxation shall be.*

It is the discretion and legislative action of those authorities which determine the rate of taxation of the railroad companies.

8th. It is clearly established law that municipal corporations are created for the general purposes of government, in which capacity their action is subject to the control of the legislature.

They are also granted powers which they exercise for the benefit of their own citizens. The exercise of these powers is discretionary with them, and they are not subject to the control of the legislature. In the exercise of those powers they act in the capacity of private corporations.

It is in the exercise of these powers, and in their character of private corporations, that they provide for the local conveniences for their citizens in furnishing water, light, sewerage, fire protection, public grounds, parks, fountains, adornments, paved streets, water works for private as well as public use, electric light plants for private as well as public lighting, and various other conveniences.

- Cooley on Taxation, pp. 688, 689, (2nd Ed.),
 Board of Park Commissioners vs. Common Council of Detroit,
 28 Mich., 228, 236, 241,
 Attorney General vs. Burrell, 31 Mich., 25, at 34, 35,
 Davock vs. Moore, 105 Mich., 120, at 128, 132,
 Cook Farm Co. vs. City of Detroit, 124 Mich., 426, at 429,
 Ill. Trust & Savings Bank vs. City of Arkansas City, 76 Fed.,
 R. 271, at 282 (C. C. A.),
 People vs. Coler, 166 N. Y., 1,
 People vs. Batchellor, 53 N. Y., 128, at 141,
 Bailey vs. Mayor, 3 Hill, 531, at 539,
 Safety &c. Co. vs. Mayor of Baltimore, 66 Fed., 140, at 143,
 144 (C. C. A.).

Cooley on Taxation, pages 688, 689, says:

"They have thus their public or political character, in which they exercise a part of the sovereign power of the State for governmental purposes, and they have their private character, in which, for the benefit or convenience of their own citizens, they exercise powers not of a governmental nature, and in which the state at large has only an incidental concern, as it may have with the action of private corporations. It may not be possible to draw the exact line between the two, but provisions for local conveniences for the citizens, like water, lights, public grounds for recreation, and the like, are manifestly matters which are not provided for by municipal corporations in their political or governmental capacity, but in *quasi* private capacity in which they act for the benefit of their corporators exclusively. In their public, political capacity, they have no discretion but to act as the State which has created them shall, within constitutional limits, command, and the good government of the State requires that the power should at all times be ample to compel obedience, and that it should be capable of being promptly and effi-

ently exercised. In the capacity in which they act for the benefit of their corporators merely, there would seem to be no sufficient reason for a power in the State to make them move and act at its will, any more than in the case of any private corporation."

In *Board of Park Commissioners vs. Common Council of Detroit*, 28 Michigan, Mr. Justice Cooley, at page 236, uses the following language:

"In all matters of general concern there is no local right to act independently of the State; and the local authorities cannot be permitted to determine for themselves whether they will contribute through taxation to the support of the State government, or assist when called upon to suppress insurrections, or aid in the enforcement of the police laws. Upon all such subjects the State may exercise compulsory authority, and may enforce the performance of local duties, either by employing local officers for the purpose, or through agents or officers of its own appointment. The same doctrine was declared in *People vs. Mahaney*, 13 Mich., 481, and in *Bay City vs. State Treasurer*, 23 Mich., 503. It was also recognized in the statement that in the levy of taxes for purposes of general concern, the municipal bodies cannot demand a right to be consulted, and their consent is immaterial. And we concur fully in the views which have been expressed by other Courts in the cases to which our attention was called on the argument, that as regards duties which the people in the several localities owe to the commonwealth at large, they can not be allowed a discretionary authority to perform them or not as they may choose. Such an authority would be wholly inconsistent with anything like regular or uniform government in the State."

"But we also endeavored to show in *People vs. Hurlbut*,

that though municipal authorities are made use of in State government, and as such are under complete State control, they are not created exclusively for that purpose, but have other objects and purposes peculiarly local, and in which the State at large, *except in conferring the power and regulating its exercise*, is legally no more concerned than it is in the individual and private concerns of its several citizens."

And at page 241, he says:

"It is as easy to justify on principle, a law which permits the rest of the community to dictate to an individual what he shall eat, or what he shall drink, and what he shall wear, as to show any constitutional basis for one under which the people of other parts of the State, through their representatives, dictate to the City of Detroit, what fountains shall be erected at its expense for the use of its citizens, or at what cost it shall purchase, and how it shall improve and embellish a park or boulevard for the recreation and enjoyment of its citizens. The one law would rest upon the same fallacy as the other, and the reasons for opposing and contesting it would be the same in each case."

In *Attorney General vs. Burrell*, 31 Mich., at page 34, Justice Cooley says:

"Suppose some fine natural park, embracing unusual features of beauty and attraction, to be found within the limits of a township otherwise in its appearance monotonous and uninviting, which for a small sum might be purchased for the enjoyment of its inhabitants in perpetuity; can provision for such enjoyment be considered so entirely foreign to the purposes for which townships exist, and to the powers committed to them for exercise, as to render it necessary for the inhabitants to ask and

obtain special legislative permission before appropriating for themselves and their posterity the continuous benefits which such a park might afford them? We think not."

"In *The People vs. The Common Council of Detroit*, 28 Mich., 228, the nature of the ownership which municipal corporations have in their parks and commons was considered, and was declared to be analogous to the ownership of private persons."

In *Illinois Trust and Savings Bank vs. Kansas City*, 76 Fed., Judge Sanborn, delivering the unanimous opinion of the Circuit Court of Appeals, says, page 282:

"A city has two classes of powers—the one legislative, public, governmental, in the exercise of which it is a sovereignty and governs its people; the other proprietary, *quasi* private, conferred upon it, not for the purpose of governing its people, but for the private advantage of the inhabitants of the city and of the city itself as a legal personality. In the exercise of the powers of the former class it is governed by the rule here invoked. In their exercise it is ruling its people, and is bound to transmit its powers of government to its successive sets of officers unimpaired. But in the exercise of the powers of the latter class, it is controlled by no such rule, because it is acting and contracting for the private benefit of itself and its inhabitants, and it may exercise the business powers conferred upon it in the same way, and in their exercise it is to be governed by the same rules that govern a private individual or corporation." (Citing numerous cases.) "In contracting for water works to supply itself and its inhabitants with water, the city is not exercising its governmental or legislative powers, but its business or proprietary powers. The purpose of such a contract is not

to govern its inhabitants, but to obtain a private benefit for the city itself and its denizens."

In *Safety etc., Co. vs. Mayor of Baltimore*, 66 Fed., 140, at 143, Circuit Judge Simonton, delivering the opinion of the Circuit Court of Appeals, says as follows:

"It seems to be a contradiction in terms to speak of a contract revocable at the will of one of the contracting parties. Be this as it may, municipal corporations, confining the term to cities and towns, possess a double character,—the one governmental, legislative, or public, the other in a sense proprietary or private. In its governmental or public character the corporation is made by the State one of its instruments, the local depository of certain limited and prescribed political powers to be exercised for the public good on behalf of the State, and not for itself. These legislative or governmental powers they cannot cede away or control or embarrass by any contract disabling them from performing their public duties. *Western Saving Fund Soc. vs. City of Philadelphia*, 31 Pa. St., 182. Such contracts necessarily are void *ab initio*. They are not within the scope of the powers of the corporation. But in its proprietary or private character, the powers are conferred on the municipal corporation, not from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct legal personality. As to such powers, and as to the property acquired thereunder, and the contracts made with reference thereto, *the corporation is to be regarded quoad hoc a private corporation.*"

9th. The following are some of the special provisions, by which municipalities may expend money by taxation for the convenience and enjoyment of their inhabitants, which are in

addition to the provisions of the various city charters, which charters have very liberal provisions, according to the desires and wishes of the different localities for the expenditure of money to provide for the convenience and enjoyment of the inhabitants:

(a) Cities and villages may purchase, construct and maintain waterworks to supply the inhabitants with pure water, and to extinguish fires, *and also for ordinary and extraordinary uses of the inhabitants, and for such other purposes as the council may prescribe.*

1 Comp. L., Secs. 2890, 2891, 3247, 3248, 3416.

(b) Cities and villages may purchase, construct, operate and maintain works for supplying the cities and villages, and their inhabitants, with gas, or electric, or other lights.

1 Comp. L., Secs. 3440, 3437.

(c) Cities and villages may purchase the rights of any toll road companies to maintain gates and collect tolls on any streets or highways of cities and villages.

1 Comp. L., Sec. 3446.

(d) Cities and villages may establish and maintain fire departments, and for that purpose purchase and acquire property, buildings, engines and apparatus, sink wells, construct cisterns and reservoirs.

1 Comp. L., Secs. 2878, 2879, 2880, 3277, 3278, 3279.

(e) Cities and villages may purchase, acquire and maintain parks, public grounds, buildings and markets, and may light and ornament the public grounds and parks.

1 Comp. L., Secs. 2772, 3152, 3154.

(f) Townships, like cities and villages, may purchase and maintain parks.

Attorney General vs. Burrell, 31 Mich., 25, at 34, 35.

(g) Cities may establish and maintain public libraries and reading rooms.

1 Comp. L., Sec. 3107, Subd. 38, Sec. 3449.

(h) Villages and townships may establish and maintain libraries.

1 Comp. L., Sec. 3458.

(i) School Districts may establish and maintain libraries.

2 Comp. L., Secs. 4757, 4763.

(j) Cities, villages and townships may erect soldiers' monumental buildings for the use and enjoyment of their inhabitants.

1 Comp. L., Secs. 1700, 1702.

(k) Cities and villages may purchase, maintain and adorn cemeteries.

1 Comp. L., Secs. 2824, 3132, 3133.

(l) Cities, townships and villages, in addition to the taxation which they may impose for their conveniences, are made liable for damages suffered by parties in their person and property by reason of the failure of the cities, townships and villages, respectively, to maintain streets, sidewalks and bridges in a condition reasonably safe for the use of the public.

1 Comp. L., Secs. 3441, 3442.

It is well known that the amounts of claims arising under this liability of cities, villages and townships which go into judgment against them constitute very large

amounts which enter in and make a part of the taxation for municipal purposes upon which the rate of taxation of railroad companies is based, so that the railroad companies are in fact taxed not only because of the money expended by the different municipalities for the simple convenience and enjoyment of their inhabitants, *but also because of the negligence of the municipalities to keep and perform the duties which are imposed upon them toward the public.*

(For the above statutes, reference is made to Appendix B hereto).

All the various properties acquired by cities, villages and townships for the benefit, convenience and enjoyment of their inhabitants *are investments*, and they are owned, held and maintained by the municipalities in their private character as the property of private corporations.

Mayor vs. Park Commissioners, 44 Mich., 602, at 604.

Mt. Hope Cemetery vs. Boston, 158 Mass., 509, 519.

33 N. E., 695.

Chicago etc., R. Co. vs. Chicago, 166 U. S., 226, at 239.

Under said Act No. 173, whenever any of the municipalities tax their own inhabitants for the purpose of making such investments and providing, maintaining, embellishing, or adorning any of these properties, their action determines and imposes taxation upon the railroad companies, *although in such action no consideration is taken, or can be taken, either of the amount of such taxation, or the purpose to which it is to be applied, or of the extent of the burden which is imposed upon the companies, nor of the justice or injustice of imposing such burden upon the companies.*

No power is given to the railroad companies to protect themselves in any manner against the unwisdom or needlessness of the taxation by which they are themselves subjected to the burden caused by such action of the municipalities.

In principle it is the same as if the taxation of railroad companies was to be determined by the average expenditure made by the farmers of the State in maintaining and improving their farms, or by the average expenditures of the various manufacturing corporations of the State in the maintenance and improvement of their plants.

The Chicago & Northwestern Railroad Company, and other companies whose railroads and properties are in the Upper Peninsula, do not extend into the Lower Peninsula and have no property therein, and no representation in any of the municipalities in the Lower Peninsula. The amount of their taxation depends upon the amount which the various municipalities in the Lower Peninsula shall be liable for on account of their negligences, and shall expend in parks, public grounds, libraries, reading rooms, monumental buildings, fountains, markets and other embellishments, as well as for the conveniences of light, water, fire protection, sewerage, and other works which are for the benefit and enjoyment of the inhabitants of those municipalities, and which are not for the governmental purposes of the State.

When Detroit expends one hundred thousand dollars for the embellishment of Belle Isle Park, and the City of Saginaw, in constructing a bridge, expends one hundred thousand dollars extra for a bridge which shall be an ornament to the city, those cities determine that the railroads are to be taxed in an amount of moneys proportionate to the amount raised by such taxation, to be devoted to the purposes named in said Act No. 173.

All the railroad companies are situated and affected in like manner in respect to the action of the municipalities which determine the amount of the taxation of the companies.

Each one of them extends into only a small portion of the municipalities of the State, and its tax is determined by the action of the municipalities, which action can in no way be influenced by the companies or their stockholders. The Pere Marquette Railroad reaches many portions of the State, but extends into only a part of the municipalities of the Lower Peninsula, and into no municipalities of the Upper Peninsula.

10th. The moneys raised by taxation under said Act, go into the state treasury and are distributed among the municipalities to defray the expenses of the public schools.

1 Comp. L., Sec. 3350,

2 Comp. L., Sec. 4642.

The fact that the more the municipalities expend for local purposes the greater will be the fund in their treasuries from the taxation of the railroad companies to lessen the local taxes for school purposes *is an inducement and an influence for generous and extravagant expenditures by the authorities of the municipalities for their various local purposes.*

It is submitted that this method for the assessment and taxation of railroad companies is "inconsistent with natural justice."

It is not a question here, in determining the validity of the act, of the extent to which the taxation imposed upon

the railroad companies for the year 1902 is made up of the action of the municipalities above referred to.

The validity of the act is not determined by what is done in the particular instance under it; it is to be determined by what may be done by the authority of the act.

Stuart vs. Palmer, 74 N. Y., 183, 188,

Gulf &c. R. R. Co. vs. Ellis, 165 U. S., 150, at 153, 154.

In this last case, referring to the equal protection of the laws, the Court says (pp. 153, 154) :

"The matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved. As well said by Mr. Justice Bradley, in *Boyd vs. United States*, 116 U. S., 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property *should be liberally construed*. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.'"

11th. It is said that the Legislature determines the amount of the tax of the railroad companies by this act, as the Legislature would do if, after the municipalities had levied their taxes and the average rate of their taxation had become known, the Legislature should meet from year to year and adopt that rate and direct it to be levied upon the railroad companies.

Most clearly this is error.

If the average rate were determined and reported to or known by the Legislature, and the Legislature should then by an act adopt that rate, and direct it to be levied upon the railroad companies, the Legislature would deal with a definite rate and would then determine, in view of the public needs for which taxation upon the companies was to be imposed, whether the sum to be produced by that rate was required for those needs, and whether the rate ought justly to be laid upon the companies.

The rate to be levied upon railroad companies would then be determined by the Legislature by its own independent, legislative action, dealing with and considering a definite specific rate and by deciding whether such rate was a proper rate, precisely as it would do in fixing a rate where there had been no action taken by the municipalities in reference to their local affairs.

The expenditures of the municipalities for local purposes differ from year to year, and the average rate of their taxation from year to year, or for any year cannot be foreseen; therefore the action of the Legislature in directing that a rate of taxation which shall thereafter be determined by the action of the municipalities shall be levied, is in no sense such a determination of the rate of taxation by the Legislature as it would be if the Legislature by an act fixed a definite rate, which rate was known to the Legislature at the adoption of the act.

Under the action of the Legislature in determining whether it would adopt as the rate of taxation of the railroad companies for any year the average rate of taxation of the municipalities for that year, *the railroad companies and their stockholders would have the right to appear and to be heard by the Legislature in reference to such rate.*

This right of hearing is a fundamental and constitutional right of the taxpayers, whenever legislative action is taken to determine the rate of taxation, and of this right they are deprived under the provisions of said Act 173.

The right of the taxpayers to a hearing before the Legislature when action is taken by that body to determine the amount or rate of taxation to be imposed is discussed in the next division of this brief, at page —52

IV.

The determination of the rate of taxation of the railroad companies by the action of the municipalities, and not by the Legislature, violates the requirement of due process of law in the taxation of the railroad companies.

1st. The principles of due process of law as defined by this Court in respect to taxation, require that the process shall be pursued in the ordinary mode prescribed by law, be just to the parties affected, be adapted to the end to be attained, and when necessary to the protection of the parties it must give them an opportunity to be heard respecting the justice of the judgment sought, and there must be the observance of those general rules established in our system of jurisprudence for the security of private rights.

Hagar vs. Reclamation District, 111 U. S., 701, at 708,

Davidson vs. New Orleans, 96 U. S., 97, at 107,

Bell's Gap R. R. Co. vs. Pennsylvania, 134 U. S., 232, at 237,

Lent vs. Tillson, 140 U. S., 316, at 327,

Kentucky Railroad Tax Cases, 115 U. S., 321, at 331,

Norwood vs. Baker, 172 U. S., 269, at 277, 278,

Roller vs. Holly, 176 U. S., 398, at 409.

Weimer vs. Bunbury, 30 Mich., 201, at 213.

Mr. Justice Harlan in French vs. Barber Asphalt Paving Co.,
181 U. S., 324, at 356,

Miller on the Constitution, page 666,

Cooley on Taxation, p. 51 (2nd Ed.).

Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, at 110,

County of Santa Clara vs. So. Pacific R. Co., 18 Fed., 385,
at 390.

In Hagar vs. Reclamation District, 111 U. S., 701, at page 708, Mr. Justice Field, delivering the unanimous opinion of the Court, says:

"It is sufficient to observe here, that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

In Bell's Gap Railroad Co. vs. Pennsylvania, 134 U. S., 232, at page 237, Mr. Justice Bradley, delivering the opinion of the Court upon the subject of the power of the State in taxation, says:

"It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible

property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise."

Mr. Justice Harlan in *French vs. Barber Asphalt Paving Co.*, 181 U. S., 324, at page 356, referring to the decision on the subject of due process of law in taxation in *Davidson vs. New Orleans*, says as follows:

"Here is a direct affirmation of the doctrine that a tax, assessment, servitude or other burden may be imposed by a State, or under its authority, consistently with the due process of law prescribed by the Fourteenth Amendment, if the person owning the property upon which such tax, assessment, servitude or burden is imposed is given an opportunity, in some appropriate way, to contest the matter."

In *Roller vs. Holly*, 176 U. S., 398, Mr. Justice Brown, delivering the opinion of the Court, at page 409, says:

"That a man is entitled to some notice before he can be deprived of his liberty or property, is an axiom of the law to which no citation of authority would give additional weight."

Mr. Justice Miller in his work on the Constitution, at page 666, says:

"A law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the Fourteenth Amendment to the Constitution, which declares that no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it, either before that amount is determined, or in subsequent proceedings for its collection."

2nd. The tax levied under said Act No. 173, is a State tax, imposed for the benefit of the educational funds of the State.

The determination of the tax for the purposes of the State is by the law of the land required to be made by the Legislature of the State.

(a) To determine the tax, when it is an ad valorem tax, requires that the Legislature state the amount to be raised or the rate of the tax upon the dollar of the valuation. The determination of the amount to be raised, or the rate of taxation on the valuation *is the essential, the chief and necessary act in taxation. In the nature of the case the determination of the amount, or the rate, is a legislative act.*

Being a necessary act of the Legislature it is not in the power of the State in the preservation of the established principles of American law, which constitute the law of the land, *to delegate or refer such determination to the action of any other body of officials.* It can not be referred to and made to depend upon the legislative or discretionary

action of the municipalities. This is most clearly established by the following authorities which have been heretofore cited and from which quotations have been made:

- Cooley on Taxation, pp. 61, 62, 63, 141, 142, 241, 242, (2nd Ed.),
 Board of Park Comm'rs vs. Common Council of Detroit,
 28 Mich., 228, at 236, 241, 248,
 Metropolitan Police vs. Board of Auditors, 68 Mich., 576,
 at 579,
 Blades vs. Water Commissioners, 122 Mich., 366, at 379,
 Wilcox vs. Paddock, 65 Mich., 23, at 29,
 The People vs. Hurlbut, 24 Mich., 44, at 87, 95,
 Cook Farm Co. vs. City of Detroit, 124 Mich., 426, at 429,
 Attorney General vs. Detroit Common Council, 58 Mich., 213,
 at 219, 220,
 United States vs. New Orleans, 98 U. S., 381, at 392,
 State R. R. Tax Cases, 92 U. S., 575, at 615,
 Heine vs. The Levee Commissioners, 19 Wall., 655,
 Meriwether vs. Garrett, 102 U. S., 472, at 501, 515,
 Thompson vs. Allen County, 115 U. S., 550, at 555,
 Harward vs. St. Clair Drain Co., 51 Ill., 130, at 133, 134, 135,
 Parks vs. Board of Comm'rs, 61 Fed., 436, at 437, 438,
 Loan Association vs. Topeka, 20 Wall., 655, at 664.

(b) The same principle is made imperative by the Constitution of Michigan, which by Article XIV, Section 14, provides as follows:

"Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

3rd. In the determination of a tax by the Legislature it is an essential of just legislation that the Legislature act in view of and determine the needs of the public in respect to the objects for which moneys are to be raised by taxation, and of the amount necessary to provide for those needs, *and also the extent to which it is just to bur-*

den the taxpayers against whom the taxes are to be charged. These are principles which are fundamental in taxation.

Midland vs. Roscommon, 39 Mich., 424, at 427.

Michigan Land &c. Co. vs. Township of L'Anse, 63 Mich., 700, at 703.

It is an axiom of our law that *the power to tax* is a power to destroy. The object of taxation is not to destroy but to promote the public interests, and the promotion of the public interests includes and requires the promotion of the interests of the taxpayers who must supply the public funds of the State.

It is only in the observance of these principles of legislation that the determination of taxation can be made, and the ordinary mode prescribed by law be pursued, or the action be just to the taxpayers, or be adapted to the end to be obtained, and the opportunity to be heard be given to the taxpayers to which they are entitled.

It is only in this way that the principles which govern due process of law, as declared by this Court, can be observed and applied in taxation.

4th. Where the amount of the tax to be raised, or the rate of taxation, is determined by the Legislature itself, the taxpayers who are to be charged with the taxes have a right to and an opportunity to be heard by the legislature upon the whole subject of the taxation, including the purpose of the tax, the needs of the public for the promotion of the object for which the taxes are to be imposed, the amount of taxation required for those needs, *and the amount which can be properly and justly charged against the taxpayers.*

The right to such a hearing is the right of petition to the Legislature upon the subject which is pending before the Legislature and upon which it is proceeding to act.

This right is a part of the law of the land.

Cooley on Constitutional Limitations, pp. 497, 498 (7th Ed.).

a Story on the Constitution, Sec. 1894.

United States vs. Cruikshank, 92 U. S., 542, at 552.

Citizens' Bank vs. Board of Assessors, 54 Fed., 73, at 80.

Cooley on Constitutional Limitations, page 497, says:

"The right of the people peaceably to assemble, and to petition the government for a redress of grievances is one which 'would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature and structure of its institutions. It is impossible that it could be practically denied until the spirit of liberty had wholly disappeared, and the people had become so servile and debased as to be unfit to exercise any of the privileges of freemen.'"

And again, at page 498:

"The right of petitioning is indeed a necessary consequence of the right of free speech and deliberation,—a simple, primitive and natural right."

2 *Story on the Constitution*, referring to the provision of the Federal Constitution, of the right of the people peaceably to assemble, and to petition the government for a redress of grievances, says (Sec. 1894, p. 676):

"This would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature of its structure and institutions. It is impossible that it could be practically denied, until the spirit of liberty had wholly disappeared, and the people had be-

come so servile and debased, as to be unfit to exercise any of the privileges of freemen."

In *Citizens' Bank vs. Board of Assessors*, 54 Fed., 73, at page 80, the Circuit Court, referring to the provision in the Constitution of Louisiana of the right of the people peaceably to assemble and petition the government, says:

"I take it to be undeniable that the 'right of petition' as that expression is used in the Constitution of the State, means the right of every being, natural and artificial, to apply to any department of government, including the Legislature, for the redress of grievance or the bestowal of right, and is a further guaranty of the enjoyment of such redress or right when obtained, free from all forfeiture or penalty for having sought or obtained it."

5th. The Constitution of Michigan grants to the taxpayers the absolute right to a hearing before the Legislature upon the measures to be adopted for their taxation.

Article XVIII, Sec. 10,

The State Tax-Law Cases, 54 Mich., 350, at 381, 382.

Article XVIII, Section 10, is as follows:

"The people have a right peaceably to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances."

In *State Tax-Law Cases*, 54 Mich., 350, Chief Justice Cooley uses the following language (pp. 381, 382):

"Legislators are confined to no one method and no particular time in obtaining the information they are to act

upon. They get it where they can, and when and of whom they please. The more they endeavor to learn that which others can inform them of, the better legislators are they likely to be."

"The Constitution of the State recognizes this difference in the provision that 'the people have the right peaceably to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.' Article 18, Section 10. This section gives and was intended to give to the people the right to present their views to the Legislature on any subject which is of legislative cognizance."

In *Loan Association vs. Topeka*, 20 Wall., 655, the Court speaking by Mr. Justice Miller, says (p. 663) :

"Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited. It is true that express limitation on the amount of tax to be levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied, as the support of government, the prosecution of war, the National defence, any limitation is unsafe."

The abuse of the power of taxation referred to by Mr. Justice Miller is in the exercise of the taxing power by the Legislature. *The protection of the taxpayers against that abuse consists in the right of the taxpayers to be heard while the legislation for taxation is in action, and before it has passed into final enactment.*

It is submitted that it is clearly a taking of property without due process of law to deprive the taxpayer of the

right of an opportunity to be heard by the Legislature while the Legislature may be engaged in legislation which may constitute an abuse of that power.

This Court has held that the determination of a district for taxation—that is, what property shall be subject to taxation—for local purposes, is legislative action, and when instead of the Legislature making that determination it *delegates to a board of commissioners the power to determine the taxing district the taxpayers have a right to a hearing upon that subject before such board.* The deprivation of the right to such hearing would be taking property by taxation without due process of law.

Paulsen vs. Portland, 149 U. S., 30, at 40,

Fallbrook Irrigation District vs. Bradley, 164 U. S., 112,
at 170, 175,

Spencer vs. Merchant, 125 U. S., 345, at 356,

French vs. Barber Asphalt Paving Company, 181 U. S., 324,
at 339, 340, 341.

The principle of those decisions is that parties who are subjected to taxation by any legislative action have a right to be heard before the legislative body while it is enacting legislation for their taxation. If the Legislature determines the taxing district the taxpayers have the right of hearing upon that subject which is secured to them by the fundamental and constitutional right of petition. But if the Legislature delegates to a municipal body the power to determine the district, the Legislature must provide for and preserve to the taxpayers their right to be heard upon the same subject before such municipal body.

6th. This right is taken from the railroad companies and their stockholders by the provisions of the act under which they are taxed which makes the action of the municipalities the determination of the rate of tax.

The reply for the defense is that the provisions of the Constitution of Michigan authorize the method of taxation adopted in the statute, and if thereby the railroad companies are deprived of the right of hearing before the Legislature, it is a deprivation provided for by the State Constitution.

The argument comes to this, viz.: That by the State Constitution all persons, both natural persons and corporations, and all stockholders of corporations shall have the right of petition and hearing before the Legislature upon every subject of legislation which affects their interests, *except railroad companies and their stockholders. When these are being taxed they shall have no right of petition nor right to be heard.*

We insist that this contravenes due process of law, and that it denies the equal protection of the laws. It is none the less a violation of the provisions of the Fourteenth Amendment because authorized by the State Constitution.

7th. As before stated, the Legislature, by the adoption of the act in question does not determine the tax by which the taxes are levied under said act.

The effect of the act is this: In place of providing that a designated sum shall be raised, or that the rate of taxation of the railroad companies shall be \$16.00 on the \$1,000.00 of valuation of their property, or some other number of dollars on the thousand dollars of such valuation, the act provides that the rate for the railroad companies shall be \$16 on the thousand dollars' valuation, in case the municipalities, by their action and legislation shall determine that \$16 *on the thousand dollars of their*

own valuation shall be the rate of taxation in the municipalities, but if the municipalities determine that their rate on their valuation shall be \$15, then the rate for the railroad companies shall be \$15, and if the municipalities shall determine some other or different rate for themselves, the rate so determined upon shall determine the rate for the railroad companies, and whatever changes shall be made from year to year in their rate by the municipalities shall determine the rate for the railroad companies from year to year.

To assert that municipalities do not by their action determine the rate of taxation of the railroad companies is to contradict a plain fact.

To assert that the determination of the rate for the railroad companies by such method is the same in effect, or is equivalent to the adoption by the Legislature each year of the rate determined for that year by the municipalities after such determination by the municipalities has been made, is clearly without support.

In the adoption of Act No. 173, neither the amount of the taxes which would be levied under it, nor the rate, could be understood or foreseen by the Legislature, for the reason that the determination of the amount and rate would depend, and must depend upon the exercise from year to year of the legislative discretion of the municipalities in determining the amount of taxes to be raised *for entirely other purposes*, which are in no way related to the object for which the railroad companies are taxed, and which amount raised for other purposes would be determined by the constantly changing conditions and needs and desires of those communities.

8th. The railroad companies had an opportunity in the legislation by which said Act No. 173 was adopted to be heard in relation to the adoption of the act, but as the act did not state the amount of the tax, or the rate in terms of money, but only determined that such amount or rate should be determined by reference to the action thereafter to be taken from year to year by the municipalities, the only opportunity which the railroad companies had for a hearing was upon the question *as to whether such reference should be made to the municipalities for the determination by their action of the rate.*

9th. It is not true that the companies have an opportunity for a hearing before the municipalities upon the subject of the amount of the taxes to be raised under said act, or the rate of taxation to be imposed upon them, because those subjects are not to be considered by the municipalities, and they have no power to consider them. The rate of taxation of the railroad companies which would result from the action of the municipalities is not to govern the action of the municipalities in respect to their own taxes, *but their action is expressly made to govern the rate of taxation for the railroad companies.*

No reasoning can eliminate the fact that it is the action of the municipalities which fixes and determines the rate of the railroad tax.

On the other hand, if after the municipalities have determined the rate of taxation in any year that rate should come before the Legislature for its adoption as the rate to be imposed upon the railroad companies, the same considerations would be before the Legislature in respect to the need of such a rate to provide for the public interest of the educational funds of the State, and the

justice of imposing such a rate upon the companies, and if the rate of taxation in the municipalities for their local purposes was to be considered at all by the Legislature there could also then be taken into account in what manner, and by what expenditures, whether needful or useless, proper or extravagant, the municipal rate had been made, and upon all these subjects the companies would have their right of opportunity for a hearing before the Legislature, by their petition.

It is respectfully insisted that the determination of the rate of taxation in the manner provided by said Act and the deprivation of these taxpayers of said right of hearing, by the operation of said act, violates due process of law.

In *Cotting vs. Kansas City Stock Yards Co.*, 183 U. S., 79, at page 110, Mr. Justice Brewer, delivering the opinion of the Court says:

"It has been more than once said, judicially, that one of the principles upon which this government was founded is that of equality of right. It is emphasized in that clause of the Fourteenth Amendment which prohibits any State to deny to any individual the equal protection of the laws. That constitutional provision does not, it is true, invalidate legislation on the mere ground of inequality in actual result. Tax laws, for instance, in their nature, are and must be general in scope, and it may often happen that in their practical application they touch one person unequally from another. *But that inequality is something which it is impossible to foresee and guard against, and therefore such resultant inequality in the operation of a law does not defeat its validity.*"

In *County of Santa Clara vs. Southern Pacific R. Co.*, 18 Fed., 385, at page 399, Mr. Justice Field uses the following language:

"Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the amendment. There undoubtedly are, and always will be, more or less inequalities in the operation of all general legislation arising from the different conditions of persons from their means, business, or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, *from a carefully devised scheme to produce such inequality; or a scheme, if not so devised, necessarily producing that result.* Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position that unequal taxation is not within the scope of its prohibitory clause would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation, leveled against special classes, has been the fruitful means of oppressions, and the cause of more commotions and disturbance in society, of insurrections and revolutions, than any other cause in the world. It would, indeed, as counsel in the *San Meteo Case* ironically observed, be a charming spectacle to present to the civilized world, if the amendment were to read, as contended it does in law: 'Nor shall any state deprive any person of his property without due process of law, *except it be in the form of taxation*; nor deny to any person within its jurisdiction the equal protection of the laws, *except it be by taxation.*' No such limitation can be thus ingrafted by implication upon the broad and comprehensive language used. The power of

oppression by taxation without due process of law is not thus permitted; nor the power of taxation to deprive any person of the equal protection of the laws."

In *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., this language is used (p. 558) :

"No rule can be formulated that will cover every case. But upon this general question we have said that the guarantee of the equal protection of the laws means *'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.'*"

In the same case it is said (p. 560) :

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

V.

The equal protection of the laws is denied to the railroad companies subjected to taxation under said Act No. 173, in that the protection which is extended by Section 14 of Article XIV of the Constitution of Michigan to all other taxpayers of the State is denied to said railroad companies.

Said Section 14 is as follows: "Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

(a) This provision was adopted into the Constitution

of 1850, literally from Section 13, Article VII, of the Constitution of 1846, of the State of New York.

1 Revised Statutes of N. Y., page 68, (5th Ed.)

The interpretation of this provision of the Constitution of New York, by the unanimous opinion of the Court of Appeals, is that it is designed for the protection of the taxpayer; that strict compliance with it is required, and that no room for lax interpretation is allowed.

It requires that when the Legislature imposes a tax the Legislature must determine the amount of tax to be raised, and cannot leave that amount to be determined by the legislative action or discretion of any other department of the State.

People vs. Board of Supervisors of Kings Co., 52 N. Y., 556, at 566.

In the above case the Court of Appeals of New York, speaking of the above provision of the Constitution says as follows (pages 566 and 567): "The Constitution, prescribing the requisites of a law imposing a tax, is in harmony with the other provisions designed *for the protection of the taxpayer*. Its terms are precise and unambiguous, leaving no way of escape from the literal compliance with them, and no room for evasion by any lax interpretation. They are so plain they need no interpretation. It declares that 'every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.'" (Const., Art. 7, Sec. 13).

"The tax would have been well specified in amount but for a clause found for the first time in a tax law. A tax

of three and one-half mills upon the dollar of the assessed value of the real and personal property in the State is definite and certain. But the Legislature have qualified the same and authorized the tax to be reduced if it should be found, upon a corrected estimate, that a lesser tax would give the necessary means. The law imposes a tax of three and a half mills per dollar, or so much thereof as may be necessary to provide for the payment, etc. This is not a specific and distinct statement of the tax to be levied, it is simply a statement of the maximum tax to be levied, *leaving it to the discretion of the administrative officers of the State to levy such tax as they shall find necessary up to the limit named. The Legislature cannot, under the Constitution, thus delegate the power of taxation. They must determine the amount necessary and adequate, and declare the amount to be levied absolutely.* If this form of enactment is allowable, a law authorizing a tax of fifty per cent. of the assessed value of the taxable property of the State, or so much thereof as might be necessary, would be valid, and the whole legislative taxing power delegated to the other departments of the State government. The law is invalid as not stating the tax imposed."

It must be without question that this provision of the Constitution of Michigan is designed for the protection of the taxpayer, and that the protection consists in the requirement that when the law is enacted which imposes a tax upon the taxpayer, the legislature which adopts the law shall itself then, in the terms of the statute, determine the amount of the tax in terms of money, by stating the sum to be raised, or the rate of the tax to be levied, and shall not leave to the action of any other body the exercise of the discretion by which the amount of the tax shall be determined or stated.

The plain intention of said Act No. 173 is not to itself state the tax, but it is to so provide that the railroad companies shall be taxed at a rate which shall be each year, and from year to year equal to the average rate of taxation which the people, *acting in the several municipalities, shall cause to be levied upon the property of the municipalities for local and municipal purposes, in addition to the rate required for governmental purposes*, such rate of taxation for local municipal purposes to be determined by the legislative discretion and action of the municipalities.

It is clearly arbitrary taxation based upon the simple principle of compelling the railroad companies *to pay as great a rate of taxation to be used for a public purpose as the municipalities should for themselves decide to pay for their private purposes*.

If the act had provided distinctly that the railroad companies should pay a rate of taxation on their property equal to the rate of taxation levied upon other property for State purposes, *and such further and additional rate as should be determined by a vote of the municipalities voting thereon*, the amount of the taxes to be paid by the railroad companies would have been no more effectually and distinctly determined by the action of the municipalities than it is now directed to be determined by said act. In such case there could be no denial that the legislature, instead of stating the tax, had delegated to the municipalities the authority to state the tax, and that such delegation was in contravention of said provision of the State Constitution.

The difference between that case and the provisions of Act 173 is that in the former case the delegation would have been direct, while in the case under the statute the delegation is indirect.

What the legislature is forbidden to accomplish directly it is forbidden to accomplish indirectly.

When the legislature in adopting an act, distinctly states the tax, as said provision of the Constitution requires; that is, determines what the amount to be raised shall be, the taxpayers have the protection of being represented by the legislators upon that distinct subject, *and of having the opportunity to be heard by petition to the legislature upon the subject of the amount of the tax*, and of the amount which ought justly to be imposed upon them.

No possible means of protection is afforded to the companies against the needlessness or unjustness of the amount of taxation imposed upon them by such action, nor is there even an opportunity afforded them for a protest, as would exist were the amount of taxes determined by the legislature instead of the municipalities.

The precise point to which the Court's attention is directed is that no taxpayers who are not taxed under said act are subjected to any such conditions in the imposition of any State tax, or any other tax whatever, which is imposed upon the railroad companies.

They are protected from such conditions in taxation by said Section 14, of Article XIV, of the Constitution.

In respect to all taxes imposed upon the other taxpayers of the State there is, under the Constitution and laws, a protection afforded them in respect to the amount of taxation, *by an opportunity and a right to a hearing on the subject of the amount of tax before the body which determines the amount of tax, and in the action by which the amount is determined, whether it be the legislature,*

a city council, a board of supervisors, a township meeting, or township board, or school district board.

(b) The fact that Act No. 173 is authorized by Sections 10 and 11 of Article XIV of the Constitution of Michigan, as amended in 1900, does not remove the objection that the companies are denied the equal protection of the laws. The State can no more deny the equal protection of the laws to any person within its jurisdiction by provisions of its Constitution than it can by the provisions of a statute.

The Fourteenth Amendment to the Constitution of the United States which forbids the State to deprive any person of property without due process of law, or to deny to any person within the jurisdiction of the State the equal protection of the laws, applies to all the means by which such a denial can be made.

Chicago &c. R. R. Co. vs. Chicago, 166 U. S., 226, at 233.

New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S., 650, at 672.

Gunn vs. Barry, 15 Wall., 610, at 623.

The Railroad Tax Cases, 13 Fed., 722.

County of Santa Clara vs. So. Pac. R. Co., 18 Fed., 385.

This Court and the Supreme Court of Michigan, have held that taxation imposed for a purpose which is not a public purpose is the taking of property without due process of law, and the Courts may determine whether the purpose of the taxation is a public purpose.

Loan Association vs. Topeka, 20 Wall., 655, at 663.

Missouri Pacific R. Co. vs. Nebraska, 164 U. S., 403, at 417.

Dodge vs. Mission Township, 107 Fed., 827, 828 (C. C. A.).

People vs. Salem, 20 Mich., 452, at 474.

Bay City vs. State Treasurer, 23 Mich., 499, at 503.

Anderson vs. Hill, 54 Mich., 477, at 491.

The question is not whether the State Constitution authorizes this method of taxation. The question is whether this method deprives the railroad companies of their property without due process of law, or denies to them the equal protection of the laws. If it does do either, the fact that the State Constitution authorizes the method establishes the fact that the State Constitution contravenes the Fourteenth Amendment and is itself invalid.

(c) Said Section 14 of Article XIV of the State Constitution is referred to in *Trowbridge vs. City of Detroit*, 99 Mich., 443, and in *Westinghausen vs. People*, 44 Mich., 265. These cases are in no way opposed to the position above presented in relation to said Section 14.

In *Trowbridge vs. City of Detroit*, 99 Mich., 443, a statute provided for the opening of streets in Detroit by condemnation proceedings, in which the jury were to determine the necessity of taking land for the street and the just compensation to be made therefor. The statute further provided that the Common Council should provide for the collection of the sum awarded by the jury, the assessment to be made and the amount levied and collected in the same manner and by the same officers and proceedings, as near as may be, as is provided in the charter for assessing, levying and collecting the expense of public improvements when a street is graded.

It was objected to the proceedings taken under the statute to collect the tax, that they were invalid because in violation of said Section 14 of Article XIV of the State Constitution.

It was held that the statute fixed both tax and object.

In that case the amount fixed for the tax was the amount of just compensation for the taking of the land which

should be determined by the verdict of the jury. It was the usual provision in our statutes for determining the compensation to be made when land is taken for the public use, and for levying a tax to pay the compensation.

In such cases the statute does not leave the amount of the tax to be fixed by the legislative action or discretion of the Common Council. It requires the jury to find as a fact, from evidence, the amount in money due to the owner of the property as his compensation for his property taken for the public use and directs the levy of that sum.

The statute authorizes the judicial investigation by a jury to determine the amount of money *under the provisions of Article XVIII, Section 2, of the State Constitution*, which is as follows: "When private property is taken for the use or benefit of the public, the necessity for using such property *and the just compensation to be made therefor*, except when to be made by the State, shall be ascertained by a jury of twelve freeholders, residing in the vicinity of such property, or by not less than three commissioners appointed by a Court of Record, as shall be prescribed by law: *Provided*, The foregoing provisions shall in no case be construed to apply to the action of commissioners of highways in the official discharge of their duty as highway commissioners."

The case before the Court was one in which the legislature is forbidden by the Constitution to determine the amount to be levied, and is required to provide for its determination by a jury, or by commissioners.

In the case of *Westinghausen vs. People*, 44 Mich., 265, the only question was whether *the statute stated the object*

of the tax. It was not whether the statute stated the tax.

The comments of Justice Campbell upon the origin of the constitutional provision "that every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied," refers only to the clause requiring the State to state *the object of the tax*.

The amendment to the Constitution of 1835, referred to by Justice Campbell, contained no requirement that a law *should distinctly state the tax*, and such amendment, by its terms, applied only to a law authorizing the borrowing of money, or the issuing of State stocks, whereby a debt shall be created on the credit of the State.

The provision of the Constitution of 1835, referred to by Justice Campbell is as follows: "That the Constitution of this State be so amended, that every law authorizing the borrowing of money, or the issuing of state stocks, whereby a debt shall be created on the credit of the State, *shall specify the object* for which the money shall be appropriated."

Revised Stat., 1846, page 30.

There has been no decision by the Supreme Court of Michigan which places any different construction upon the provision of said Section 14 of Article XIV, that every law which imposes a tax shall state the tax, than is given to it by the Court of Appeals of New York in the case of *The People vs. The Supervisors of Kings County*.

The constitutionality or validity of the Act No. 173 was not passed upon in *Board of Education of Detroit vs. State Board of Assessors*, 138 Mich., 116.

The only point decided in that case, and the only point

presented for decision was that under the provisions of the statute the State Board of Assessors had no authority to equalize the assessments made by the local assessors of the property not taxed under said act and the assessments of the properties of the railroad companies made under said act. *The railroad companies were not represented in that suit, and none of the questions were presented to the Court which are discussed in the present case.*

In *Atwood vs. Mayor of Sault Ste. Marie, et al*, decided by the Supreme Court of Michigan, September 19, 1905, 12 Detroit Legal News, p. 403, referring to a point claimed to have been decided in the former case of *Christopherson vs. Common Council of Manistee*, the Court says (p. 404): "This question was not, however, brought to the attention of the Court, and was not considered by it. Points decided in this manner are not binding as precedents. In *Maloney vs. Dows*, 8 Abbott's Practice Rep., at page 331, it is said: 'If a point is essential to the decision rendered, it will be presumed that it was duly considered, and that all that could be urged for or against it was presented to the Court; but if it appears from the report of the case that it was not taken or inquired into at all, there is no ground for this presumption, and the authority of the case is proportionately weakened.' We are not, therefore, bound to follow *Christopherson vs. Common Council of Manistee* as a precedent."

Under the expressed views of the Michigan Supreme Court the decision rendered in *Board of Education of Detroit vs. State Board of Assessors* leaves open all the questions raised in this suit in respect to the validity of said Act No. 173.

VI.

Equal protection of the laws is denied to the railroad companies under said Act No. 173, in that no provision is made for the equalization of the assessment of the property taxed under said act and the assessment of the other property of the State. in order to determine the rate of taxation imposed under said act.

1st. The rate of taxation imposed upon the railroad companies is determined by the rate at which the other property of the State is assessed in comparison with the rate at which the railroad properties are assessed.

If the property of the railroad companies is assessed at its *cash value* by the State Board of Assessors, and the other property of the State is assessed *at one-half its cash value*, the amount of taxes imposed upon the railroad companies will be increased to the amount of one hundred per cent.

If the assessed valuation of the other property is at any other amount less than its cash value, the taxation of the railroad companies will be increased in like proportion.

The State Constitution, by Article XIV, Sections 10, 11, 12, 13 and 14, provide as follows:

"Sec. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November

sixth, A. D., nineteen hundred, shall be applied as provided for specific taxes in section one of this article."

"Sec. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

"Sec. 12. All assessments hereafter authorized shall be on property at its cash value."

"Sec. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a State board, on all taxable property, except that taxed under laws passed pursuant to section ten of this article."

"Sec. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

It is the plain purpose of the Constitution to authorize the legislature to provide for the assessment of the property of corporations by a State Board of Assessors, and the assessment of the other property of the State by local assessors, or the adoption of one system for the assessment of all property paying ad valorem taxes; *but the intention is distinct and positive that all property paying ad valorem taxes shall be taxed upon the one basis of its cash value.*

It is a positive command of the Constitution that "all assessments hereafter authorized shall be on property at its cash value."

It is the intent of the Constitution that every person or corporation shall pay a tax in proportion to the cash value of his or its property, so that all classes of property shall bear the burden of taxation equally, *so far as the burden of taxation shall be affected by the basis upon which the assessment of property is made.* This is the construction of the constitutional provisions by the Supreme Court of the State in the case of Board of Education vs. State Board of Assessors, 133 Mich., 116, at 120.

The Court, after referring to the provision by which the rate of taxation is to be determined for corporations whose property is assessed by the State Board of Assessors, says (p. 120): "This constitutional provision cannot be segregated from other provisions relating to the subject ~~of~~ taxation. Construed in the manner above indicated, it is in entire accord with our whole system of taxation, *which is not only that railroad property, but that all other property shall be assessed at cash value, and that all classes of property shall bear the burden of taxation equally.*"

This construction of the Constitution of the State will be adopted as final in the Federal Courts.

Leffingwell vs. Warren, 2 Black, 599, at 603.

Provident Institution vs. Massachusetts, 6 Wall., 611, at 628.

Sioux City R. Co. vs. N. A. Trust Co., 173 U. S., 99, at 107.

Morley vs. Lake Shore R. Co., 146 U. S., 162, at 166, 167.

Fallbrook Irrigation District vs. Bradley, 164 U. S., 112, at 154.

Merchants' Bank vs. Pennsylvania, 167 U. S., 461, 462.

The command of the Constitution of the State, then, is that the provisions of legislation for taxation shall be

framed to accomplish the imposition of taxation in such manner that, by whatever boards or officers the different assessments of property may be made, all persons and corporations *shall be taxed in proportion to the cash valuation of their property.* That is to say, on the same basis of valuation, the *rate* to be imposed on the valuation may be different, but the valuation on which the rate shall be fixed shall be the same, viz.: the cash value.

2nd. The Fourteenth Amendment to the Constitution of the United States applies to the protection of the taxpayers in the legislation provided for by the Constitution, and requires *that in such legislation no person shall be denied the equal protection of the law.* It requires that whatever measure shall be adopted to protect any portion of the taxpayers against taxation not levied or imposed upon their property in proportion to the cash value of their property, shall be also provided for all taxpayers who have like need of such protection, or who may be subjected to imposition of taxation upon their property not in proportion to its cash value for want of such means of protection.

Such protection is provided by the State laws for all persons and corporations paying ad valorem taxes not taxed under said Act No. 173, by means of the equalization of all assessments which affect the proportion or rate of taxation to be levied upon the valuation of their property, to the end that none of such persons or corporations shall bear an unjust, unequal or unlawful rate or burden of taxation by reason of an improper, unjust, unequal, or unlawful assessment of either his or its own property, or the property of others, by which the rate or amount of his or its taxation may be affected. This pro-

tection is denied to the corporations which are taxed under said Act No. 173.

All the property in a township is required to be assessed by the supervisor at its true cash value. The rate of taxation which each taxpayer shall pay is determined either by his own property and all other property in the town being assessed at its true cash value, *or being assessed in the same relative proportion to its true cash value.*

If his own property, or the property of another taxpayer, is not assessed at its true cash value, or in the same relative proportion to its true cash value, the amount of tax to be paid by him will be unequal and unjust.

If his property is assessed at more than its true cash value, or if any other property is assessed at less than its true cash value, he is made thereby to pay more than his just proportion of all the taxes levied in the township.

To protect him against such result, the law provides for an equalization of the supervisor's assessment by a board of review of the township, before which board every taxpayer may appear and be heard as to the assessment of his own property and the assessment of all other property in the township.

1 Comp. Laws, Secs. 3833, 3847, 3851, 3852, 3853.

The provisions of the statute are as follows:

"Sec. 3833. An assessment of all the property in the state, liable to taxation, shall be made annually in the several townships, villages and cities thereof by the supervisors of the several townships and wards, or in villages and cities, where provision is made in the acts of incorporation or charter for some other assessing officer, then by such assessing officer, as hereinafter provided."

"Sec. 3847. On or before the third Monday of May in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. * * * The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed, and in estimating such value, he shall not be bound to follow the statements of any person, but shall exercise his best judgment."

"Sec. 3851. At the annual township meeting held on the first Monday of April in the year 1894, there shall be elected by ballot, on the regular township ticket, two suitable electors of the township to serve as members of the board of review, one of whom shall be elected for one year, and one for two years, and annually thereafter one member shall be elected for two years, who shall take the constitutional oath of office as other township officers. The supervisor and the two electors so elected shall constitute a board of review for such township."

"Sec. 3852. On the Tuesday next following the third Monday in May, the board of review of each township shall meet at the office of the supervisor; at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the said board shall proceed to examine and review the same, and during that day, and the day following if necessary, said

board of its own motion, or *on sufficient cause being shown by any person*, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. *The board shall pass upon each valuation and each interest, and shall enter the valuation of each as fixed by it, in a separate column.*"

"Sec. 3853. Said board of review shall also meet at the office of the supervisor on the fourth Monday in May at nine o'clock in the forenoon, and continue in session during the day and the day following. Such board shall continue its sessions at least six hours each day, *and at the request of any person whose property is assessed thereon, or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment shall make the valuation thereof relatively just and equal.* To that end said board may examine on oath the person making such application, or any other person touching the matter."

As the taxpayers in each township are interested in and affected in like manner by the assessment of the property in each of the other townships in the county in respect to the state and county tax to be paid by them, the Board of Supervisors of the county is required to equalize the assessments made in the townships of the county, and each taxpayer is represented before said board by the supervisor of his township, whose duty it is to secure a just equalization.

The following is the provision:

"The board of supervisors in each county shall, at their session in October in each year, examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the relative valuation of the real property in the respective townships, wards or cities, *has been equally and uniformly estimated*. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, or city, or townships, wards, or cities, such an amount as in their judgment *will produce relatively an equal and uniform valuation of the real property in the county*, and the amount added to or deducted from the valuation in any township, ward, or city, shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward, or city, in their county as determined by them."

"Sec. 3860. The board of supervisors, at their annual session in October in each year, shall ascertain and determine the amount of money to be raised for county purposes, and shall apportion such amount, and also the amount of the state tax and indebtedness of the county to the state among the several townships in the county in proportion to the valuation of the taxable property therein, real and personal, as determined by them for that year, which determination and apportionment shall be entered at large on their records. * * * *They shall hear and duly consider all objections made to raising any such moneys by any taxpayer to be affected thereby.*"

As the taxpayers in each county are affected in like manner by the assessment of the property in each of the other

counties of the state in respect to the state tax to be paid by them, the State Board of Equalization is required to equalize the assessment made in the counties, and provision is made for the taxpayers in each county to be represented and heard before said board.

1 Comp. Laws, Secs. 129, 132, 133.

The following are the provisions:

"Sec. 129. There shall be a state board of equalization, to consist of the lieutenant governor, auditor general, secretary of state, state treasurer, and commissioner of the land office, whose duty it shall be, in the year eighteen hundred and fifty-one, and every fifth year thereafter, to equalize the assessments on all taxable property in the state, except that paying specific taxes, as hereinafter provided."

"Sec. 132. After said board shall have been organized, they shall proceed to examine the tabular statements of the board of supervisors of each county, provided for in the eighth section of this act, *and to hear the representatives from the several boards of supervisors as hereinafter provided*; and they shall determine whether the *relative valuation* between the several counties is equal and uniform, according to location, soil, improvements, production and manufactories; and also whether the personal estate of the several counties has been uniformly estimated, according to the best information which can be derived from the statistics of the state, or from any other source. If, after such examination, such assessment shall be determined *relatively unequal*, they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative equal and uniform

valuations between the several counties in the state; and the percentage added to or deducted from the valuations in each county shall be entered upon their records; and the valuations of the several counties, as equalized, shall be certified and signed by the chairman and secretary of the board, and filed in the office of the auditor general, and shall be the basis for apportioning all state taxes until another equalization shall be made."

"Sec. 135. The board of equalizers shall hear any evidence which may be laid before them by any person appointed by any board of supervisors, and any representation made by such person in behalf of any county."

The taxpayers in cities and villages are protected in like manner by the provisions of their special charters, or under the general statutes relating to cities and villages, where cities and villages are incorporated under the general statutes.

The general statutes relating to cities are 1 Compiled Laws, Secs. 3322, 3323, and Secs. 2860 and 2861 in respect to villages.

The provisions in relation to cities are as follows:

"Sec. 3322. The supervisors of the several wards, the mayor and the city attorney, shall constitute a board of equalization and review of the general assessment rolls of the several wards c/ said city, a majority of whom shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day. They shall have the power, and it shall be their duty, to examine said assessment rolls, and they shall have authority to, and shall correct any errors or deficiencies found therein, either as to the names, valuations, or descriptions; and of their own motion or on cause shown, *may reduce or in-*

crease the valuation of any property found on said rolls.
 * * * If on such examination they shall deem the valuation of the several wards to be relatively unequal, they shall equalize the same by adding to or deducting from the total valuation of the taxable property in any ward such an amount as, in their judgment, will produce relatively an equal and uniform valuation of the real estate in the city."

"Sec. 3323. The said board shall meet on the third Monday in May in each year, at the council rooms in such city, at nine o'clock in the forenoon. * * * And any person or persons desiring so to do, may examine his, her, or their assessment on said rolls, and may show cause, if any exists, why the valuation thereof should be changed, and the said board shall decide the same, and their decision shall be final."

The provisions of Sections 2860 and 2861 in respect to villages are substantially the same.

3rd. The necessity for equalization by the board of supervisors and by the state board of equalization arises because of the fact that the property in each town is assessed by a separate assessor of that town, and the amount of the assessed valuation of the property in each county is determined by the board of supervisors of that county. As the amount or rate of taxation for state and county purposes of each taxpayer in every town is affected by the rate at which the property in all other towns in the county is assessed, compared with the rate at which the property in his own town is assessed, an equalization of the assessments in all the towns of the county is provided for.

As the amount or rate of taxation for state purposes of

each taxpayer in every town is affected by the rate at which the property in each county in the state is determined by the board of supervisors of that county, as compared with the rate at which property is assessed in his own county, an equalization of the assessed valuations in all the counties is provided for.

In this manner the laws provide for protection of all taxpayers, who are not included in said Act No. 173, who are taxed upon the value of their property, against unequal and unjust taxation which may arise from the unequal, unjust or unlawful assessment of their property, or the properties of others, *in all cases where such assessments may affect the amount of their taxation.*

If they are unjustly taxed under such provisions, the fault is not in the law. The law makes ample provision for their protection against unjust taxation arising from improper assessments either of their property or the property of others.

4th. By the provisions of Act No. 173, the rate or amount of taxation imposed upon the railroad companies is made expressly and specifically to depend upon the valuation at which the property in the state not included in said act is assessed.

The only means by which both the property of the railroad companies and the other property of the State can be made to bear the burden of taxation equally *in proportion to the cash value of the properties*, is by their assessments being made relatively equal in proportion to their value. This can be accomplished by the equalization of the assessment made of the railroad properties by the State Board of Assessors, and the assessment made of the other property of the State by the local assessors.

5th. It is no answer to say that the law requires the property of the railroad companies to be assessed at its cash value by the State Board of Assessors, and the other property of the State to be assessed at its cash value by the local assessors, and that the law presumes that the assessments are so made, and therefore no equalization of their different assessments is provided for or needed.

The law explicitly requires that each supervisor shall assess the property of his township at its cash value, and the same legal presumption exists that the supervisors in all the towns in the state make their assessments as the law requires, and if their assessments were in fact made at cash value, all the property assessed by the local assessors would be assessed equally, and no equalization of these assessments would be required to produce equality of taxation in proportion to value. The presumption that the assessments are made as the law requires them to be made *is not a conclusive presumption*. It has only *prima facie* force.

Cooley on Taxation, p. 418, (2nd Ed.)

The State does not act on the legal presumption that those assessments are made in fact at cash value of the property as between the taxpayers, in respect to both natural persons and corporations, not taxed under said Act No. 173.

By providing by statute for the equalization of these assessments, the State recognizes that these assessments may not be made at cash value, and therefore not relatively equal in proportion to the cash value of the different properties, and to protect these taxpayers against unjust taxation arising from such assessments, equalization of those assessments is required by statute.

The equalization is provided for because the assessments are made *of the different properties by different officers acting independently of each other.*

The same legal presumption exists that the board of supervisors of the counties of the State do their duty according to law in equalizing the properties in the counties, but the State does not act on that presumption. The ~~State~~ ^{State} recognizes that the board of supervisors may not accomplish what the law requires to be done, and to protect the taxpayers against the consequences of such failure, the equalization of the State Board of Equalization is provided for.

The State regards the equalization of these different assessments made by the local assessors so important for the protection of the taxpayers in securing to them the payment of taxes in proportion to the cash value of their property, *that no taxes levied against them are of any validity unless such equalization is made,*

Yelverton vs. Steele, 36 Mich., 62, 63.

Auditor General vs. Roberts, 83 Mich., 471, at 474.

Auditor General vs. Hill, 97 Mich., 80, 81, 82.

Maxwell vs. Paine, 53 Mich., 30, at 32.

The object of equalization is to accomplish *relative equality in valuation.*

The assessments are examined and compared by the equalizing board, not for the purpose of ascertaining whether the assessments have been made at cash value and making them conform to cash value, *but the purpose of equalization is to ascertain whether the assessments are relatively equal in proportion to the cash value of the different properties,* because if they are thus relatively

equal, equality of burden, which the Constitution aims at, will be secured whether the assessments are on the basis of cash value or on a basis less or other than cash value.

Williams vs. Mears, 61 Mich., 86, at 87.

Provident Institution vs. Massachusetts, 6 Wall., 611, at 632.

In Williams vs. Mears, 61 Mich., 86, an offer was made to show that the valuation or equalization was fifty per cent. of the true valuation of property.

The Court say of the offer (p. 87) : "If established by proof, the result would not injuriously affect the tax, because, if the reduction was uniform, the proportionate burden would be the same. And such would be the case, also, if all the supervisors in the county agreed that they would assess property uniformly at fifty per cent. of its value."

In Provident Institution vs. Massachusetts, 6 Wall., 611, the Court say (p. 632) : "Comparative valuation in assessing property taxes is the basis of computation in ascertaining the amount to be contributed by an individual."

The board of supervisors is not authorized to raise the valuation of the property of the county, as a whole, except as the operation of making the assessments of the different towns relatively equal may produce that result. The board of supervisors are not required, nor are they authorized to determine whether the assessments have been made at cash value, and if they determine that they have not been so made, to place the assessments on that basis.

Their duty is to "examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the *relative* valuation of the real property in the respective townships, wards or cities has been equally and uni-

formly estimated. If on such examination they shall deem such valuation *relatively unequal*, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, city, or townships, wards, or cities, *such amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the county*, and the amount added to or deducted from the valuation in any township, ward, or city shall be entered upon the records. They shall also cause to be entered upon their records *the aggregate valuation of the taxable real and personal property of each township, ward, or city, in their county as determined by them.*"

1 Comp. L., 1897, Sec. 3857, above quoted.

If upon examination of the several assessment rolls the board of supervisors find that the assessments have been made at one-half, two-thirds, or three-fourths of the cash value of the properties assessed, and find that the assessments in the different towns are relatively equal, or, do not "*deem such valuation relatively unequal*," they have no power to change any of the assessments.

Their duty is not to determine whether the assessments *are made according to law*, but to determine whether, whatever the basis of valuation employed by the several supervisors, *such valuation is relatively equal*.

The case is the same with the State Board of Equalization. It is not authorized to raise the valuation of the property of the State, as a whole, except as it may be accomplished by equalizing the valuations of the different counties. The State board takes the tabular statements of the board of supervisors of each county and "*determines whether the relative valuation between the several*

counties is equal and uniform, according to location, soil, improvements, production and manufactories," and also whether personal estate of the several counties has been uniformly estimated, according to the best information which can be derived from the statistics of the State, or from any other source. If, after such examination, such assessment shall be determined relatively unequal, they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative equal and uniform valuations between the several counties in the State; and the percentage added to or deducted from the valuations in each county shall be entered upon their records, and the valuations of the several counties, as equalized, shall be certified and signed by the chairman and secretary of the board, and filed in the office of the Auditor General, and shall be the basis for apportioning all State taxes until another equalization shall be made.

1 Comp. L., Sec. 132, above quoted.

If the assessments of the different counties, as presented to the State Board of Equalization, are made at any basis less than cash value, the State board has no power to make any change in them unless "such assessment shall be determined relatively unequal."

6th. It is beyond question that the law recognizes that the provision requiring the local assessors to assess all property at its cash value is not a sufficient provision to insure to the taxpayers that such assessment will be made and uniformity of taxation secured.

The result of the provisions for assessment and equalization is this; not to secure the assessment and equalization of property *at its cash value*, but to so provide that if for any cause there is a failure by the local assessments to secure equality of burden by assessment at cash value, the taxpayers are not harmed, because by equalizing their assessments the same result is secured as would be secured were the assessments made at cash value. It is a most important measure of protection to the taxpayers whose taxation is dependent upon the assessments made by different assessing officers.

7th. *The taxation of the railroads is determined by these very same local assessments.* If they are made at one-half the cash value of the property assessed it doubles the amount of taxation upon the railroads, unless the property of the railroads is also assessed at relatively the same valuation.

Equalizing the two assessments would furnish the same protection to the railroad companies which equalization furnishes to the other taxpayers. There is precisely the same need of protection by equalization in the case of the railroads as in the case of the other taxpayers.

When the assessments are unequally made so that unequal and unjust burdens are thereby put upon a portion of the taxpayers, the Courts can afford no remedy to the taxpayers who are injured, however great the injury may be, unless the action of the assessors is shown to be fraudulent or an intentional violation of the law.

For errors, or diversities, or mistakes of judgment of the assessors, the Courts afford no relief. But for inequality in the assessments arising from any cause whatever, *equalization is the remedy provided by statute, and*

affords protection as complete as it is practicable for the law to provide.

Cooley on Taxation, pp. 748, 749 (2nd Ed.), and cases cited.
 Judson on Taxation, Secs. 464, 465, 466,
 Hazzard vs. O'Bannon, 36 Fed., 854, at 855, 856,
 State Railroad Tax Cases, 92 U. S., 575, 615, 616,
 Pelton vs. National Bank, 101 U. S., 143,
 National Bank vs. Kimball, 103 U. S., 732, at 734,
 Hagar vs. Reclamation District, 111 U. S., 701, at 710, 711,
 Iron Co. vs. City of Negaunee, 116 Mich., 430, at 435, 440,
 Walsh vs. King, 74 Mich., 350, 355,
 Merrill vs. Humphrey, 24 Mich., 170, at 173,
 Porter vs. Rockford &c. R. R. Co., 76 Ill., 561, at 596,
 C. B. & Q. R. Co. vs. Cole, 75 Ill., 591, at 592, 594.

The law upon this subject is well stated in Hazard vs. O'Bannon, 36 Fed., at pages 855, 856, as follows:

"The rule is also recognized in this State, and it is so held elsewhere, that a tax founded on a fraudulent assessment may be enjoined. By a fraudulent assessment is meant an assessment that is purposely made too high, with a view of casting an undue proportion of the public burdens on a certain taxpayer, or an assessment made in pursuance of a rule of valuation adopted by the assessor that is designed to operate unequally in the distribution of taxation. *Cummings vs. Bank*, 101 U. S., 154; *Hamilton vs. Rosenblatt*, 8 Mo., App., 240, 241; *Pacific Hotel vs. Lieb*, 83 Ill., 602; *Merrill vs. Humphrey*, 24 Mich., 172; *Cooley Tax'n*, (2nd Ed.) 784, 785, and cases cited. But in the absence of actual bad faith, or of such an utter disregard of official duty as to amount to bad faith, on the part of the assessor or board of assessors, the collection of a tax bill cannot be enjoined because through an error of judgment the assessment on which it is based is too high, either considered by itself or in comparison

with other assessments on similar property; nor can a tax-bill be enjoined because the assessment was conducted irregularly or erroneously, unless the error is so far vital as to render the assessment void. *Hamilton vs. Rosenblatt, supra*; *Everitt's Appeal*, 71 Pa. St., 216; *Kelly vs. Pittsburg*, 104 U. S., 78, and cases cited; *Meyer vs. Rosenblatt*, 8 Mo., App., 602; *Cooley Tax'n*, (2nd Ed.) 748, 775, and cases cited. It is also well settled that the sole remedy for an excessive or unequal assessment which has resulted merely from an error of judgment without the violation of any rule of law, is by an appeal to boards of review or equalization, when the State has created such boards for the purpose of correcting erroneous assessments; and it is generally held that the decision of such boards as to the value of property, and as to whether assessments are uniform in amount, are conclusive upon the taxpayer."

In *Hagar vs. Reclamation District*, 111 U. S., the Court say (pp. 710, 711):

"But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers in estimating the value act judicially; and in most of the states provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law to hear complaints respecting the justice of the assessments. The law, in prescribing the time when such complaints will be heard, gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law."

"In some states, instead of a board of revision, or equalization, the assessment may be revised by proceedings in the Courts and be there corrected if erroneous, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment which can be deemed essential to render the proceedings due process of law."

8th. It is no answer to the objection made to said Act No. 173 to say that equalization is not necessary to the equal protection of the railroad companies, because the statutes of the State make it the duty of the Board of State Tax Commissioners to supervise the assessments of the other properties of the State, to the end that such other properties shall be assessed at their actual cash value.

The Board of State Tax Commissioners, at the time the taxes in question were levied, consisted of five members appointed by the governor. (The provisions of the statute as they then were are copied in Appendix C hereto).

Act No. 154, Laws 1899, p. 227, as amended by Act No. 174,
Laws of 1901, p. 248.

As above shown, the law of the State made it equally the positive duty of the supervisors and local assessing officers, to assess the properties at their cash value.

If these officers in the performance of their duties made their assessments at cash value, there would be no occasion for the provision of the law requiring an equalization of their assessments. But the State recognizes the fact that these officers fail to make their assessments at cash value, and from that cause there would be unequal and unjust burdens cast upon taxpayers.

To prevent such injustice the equalization of their assessment is not only required, but no taxation based upon the assessments is valid unless such equalization is made.

Precisely the same condition exists in respect to those taxpayers since the statute providing for the Board of State Tax Commissioners has been adopted.

If this board, by the supervision given to them in fact secured the assessment made by the supervisors and local assessing officers at actual cash value, there would be no occasion for the equalization of those assessments either by the township, city and village boards, or the boards of supervisors of the counties, or by the State Board of Equalization. But the State recognizes the fact that the supervision by the Board of State Tax Commissioners does not secure the assessment at the actual cash value, and, for the protection of all taxpayers of ad valorem taxes not included in said Act 173, requires the same equalization to be made as a condition of the validity of the enforcement of the tax levied against them.

So clearly is this the fact that by Subdivision 10 of Section 150 of said Act No. 154 (see Appendix C) it is made the duty of the Board of State Tax Commissioners to furnish information to the State Board of Equalization, to enable the latter board to perform their duties in equalizing the assessments of the counties.

By Section 152 of said act provision is made for submitting the assessment rolls made by the local assessors to the inspection of the State Board of Tax Commissioners prior to, and as a preparation for, submitting the assessments to the boards of supervisors for the equalization of the assessments.

These provisions of the act defining the duties of the State Board of Tax Commissioners are designed to make

the equalization of the assessments of the taxpayers not taxed under said Act 173 *more effective for their protection.*

The same distinction is made, and the same protection by equalization is afforded to and is required for the taxpayers not included in said Act 173, and is denied to the railroad companies taxed under said act notwithstanding the power of supervision conferred upon the Board of State Tax Commissioners.

9th. The question is distinctly this: Does the State deny to the companies taxed under Act No. 173 the equal protection of the laws, by denying to them the protection of equalization of the assessment of their own property and the property of others by which the rate and amount of their taxation are determined, *while it affords to all other taxpayers of the State (corporations and all persons against whom ad valorem taxes are assessed) the protection of the equalization of the assessment of their own property and the property of others, by which the rate and amount of their taxation are determined?*

There is an immense number of corporations in the State of various classes which own a very large proportion of the entire property of the State, upon which ad valorem taxes are assessed, which corporations are not included in said Act No. 173.

Why should the protection which is furnished to corporations *not named in the act* be denied to the corporations *which are named in the act?*

The same reasons, arising from the same conditions, namely, protection from injury by unjust and unequal assessments, exist in the one case as in the other.

The granting the protection in the one case and denying it in the other is clearly a denial of the equal protec-

tion of the laws, and the denial of the protection of equal laws.

It is class legislation.

Railroad and Telephone Companies vs. Board of Equalizers,
85 Fed., 302, at 306.

Nashville &c. R. R. Co. vs. Taylor, 86 Fed., 168, at 185, 186.

Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79.

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, at 558.

Railroad Tax Cases, 13 Fed., 722, at 733.

County of Santa Clara vs. So. Pac. R. Co., 18 Fed., 385,
at 399.

Lake Shore & Michigan So. R. R. Co. vs. Smith, 173 U. S.,
684, at 691, 698, 699.

State vs. Jones, 51 Ohio, 492.

37 N. E., 945, at 948.

Burrows vs. Brooks, 113 Mich., 307, at 309.

Stimson vs. Muskegon Booming Co., 100 Mich., 347.

Park vs. Detroit Free Press Co., 72 Mich., 560.

Kuhn vs. Common Council of Detroit, 70 Mich., 534.

Brown vs. Alabama &c. R. Co., 87 Ala., 370.

6 Southern, 295.

Pearson vs. City of Portland, 69 Me., 278, at 281.

Yick Wo vs. Hopkins, 118 U. S., 356.

In re Yot Sang, 75 Fed., 983.

Louisville Trust Co. vs. Stone, 107 Fed., 305, 306, (C. C. A.)

In Railroad and Telephone Companies vs. Board of Equalizers, 85 Fed., 302, (decided Dec. 1897), bills were filed to restrain the Board of Equalization from certifying the assessed valuation of the companies' property for taxation on the ground (among others) that the assessment is relatively out of proportion to the taxable value at which other species of property in the State are assessed, whereby the properties of the companies are made to bear an undue proportion of the burden of the government, in violation of the Constitution of the State, and that said companies are also deprived of the equal pro-

tection of the law under the Fourteenth Amendment to the Constitution of the United States.

The Constitution of the State (Tennessee), provided that "All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

It was conceded in the case that the properties of the railroad and telephone companies were assessed at their value. The answer of the Board of Equalization was taken by the Court as admitting that the board made no effort to equalize the assessment of this class of property with the assessment made on other classes of property in the State. *The statute made no provision directing the assessors, or Board of Equalization to enter upon the duty of equalization for the purpose of avoiding the disproportion between the taxable valuation of the different properties.* Upon this subject the Court uses the following language, pages 305-306:

"Was the Board of Equalization under obligation, constitutional or legal, to equalize the assessment on railroad and telephone property with the assessment on other species of property subject to taxation? It is obvious enough that if the State adopts a system of taxation by which assessments are made through different officers, agencies or boards, the State is equally represented by every such board or agency, and, so far as substantial results are concerned, the case is just the same as if the State acted through one board only. This is plainly so and is recognized as being in *Missouri vs. Hannibal & St. J. R. Co.*, 135 Mo., 625, 37 S. W., 532. The provisions of the Constitution referred to, it must be borne in mind, are man-

datory and self-executing. *Levee Dist. vs. Dawson*, 97 Tenn., 160, 36 South W., 1041; *Hyatt vs. Allen*, 54 Cal., 353; and *Board vs. Patten*, 62 Mo., 444. This being so, no legislation was necessary to give effect to these provisions of the Constitution. The Constitution is the paramount law of the land, and its mandatory directions impose a duty upon the legislature in the exercise of the taxing power, and equally upon every administrative board or agency provided for the execution of the tax system. If there is a discrimination against this species of property, imposing an unconstitutional burden thereon, the result cannot be sustained; and this is equally so, whether such a result is due to erroneous action by the board, or to defect in the legislation, in not requiring equalization, and furnishing the means whereby this might be made real and effective. If the legislature had, in terms, undertaken to exempt this board from the duty of equalization, no person of ordinary intelligence would make any question that such act would have been unconstitutional. Again, if this particular revenue act be construed as not requiring equalization of the assessment on property of this character with assessments on other kinds of property separately treated, and could be regarded as constitutional in respect to the equality guaranty, although not making such requirement of equalization, we would clearly have an instance of special, partial and class legislation of the most obnoxious kind; for it is well known that the State, in regard to every other considerable class of property, has provided a board of equalization, charged with the duty of equalizing, and no discrimination in that respect could be made between the property now in question and other taxable property in the State."

It is submitted that this is a direct decision upon the point presented in the case at bar.

The paramount law of taxation in Michigan imposes upon the legislature of the State, in the exercise of the taxing power, the same duty in respect to the protection of the taxpayers by equalization of assessments, as was imposed upon the legislature of Tennessee. Here, as there, the legislature, "in regard to every other considerable class of property, has provided a board of equalization, charged with the duty of equalizing, and no discrimination in that respect could be made between the property now in question and other taxable property in the State." In both Tennessee and Michigan the Constitution intends and requires that taxation based upon the value of the different properties shall be equal taxation so far as it is affected *by values of the property taxed*. In other words, taxes shall not be made unequal by the adoption by different assessing officers of different basis of valuation for different properties. In Tennessee, as in Michigan, to provide against such unequal taxation of properties, other than railroad properties, an equalization of the assessments of those properties, was provided for, but was omitted in respect to railroad properties. Because of this discrimination, it was declared to be class legislation. *It is as plainly class legislation, or the denial of the equal protection of the laws, in Michigan as in Tennessee.*

Nashville &c. R. R. Co. vs. Taylor, 86 Fed., 168, was upon an application for a preliminary injunction to the State Board of Equalizers, to enjoin the certification of the assessment of the complainant's property.

The bill alleged among other grounds for relief that the plaintiff was deprived of the right of equalization under the laws applicable to railroad and telephone companies, while such equalization was provided for and allowed in respect to all other property in the State sub-

ject to taxation, and that in consequence of the denial of this right, complainant's property was assessed at twenty-five to forty per cent. more in proportion to value than other calsses of property in the State. This was claimed to be in violation of the State Constitution, and of the Fourteenth Amendment to the Constitution of the United States, in that the complainant was denied the equal protection of the laws. The provision of the State Constitution referred to is the same provision referred to above in *Railroad and Telephone Companies vs. Board of Equalizers*, 85 Fed., 302.

The bill was demurred to, and the hearing was on the demurrer upon the question of the jurisdiction of the Court to grant the injunction upon the averments of the bill. In sustaining the jurisdiction of the Court and referring to the ground of complaint above stated, the Court uses this language (pp. 184, 185, 186) :

"State action, to which the prohibitions of the Fourteenth Amendment extend, is not limited to a legislative enactment as it comes from the hands of the legislature, but extends to all instrumentalities and agencies officially employed in the execution of the law down to the point where the personal and property rights of the citizen are touched. Under any other interpretation it would be practically possible to reduce the constitutional guaranty to a mere *brutum fulmen*. A statute might be framed entirely fair upon its face, which, by the omission of necessary affirmative provisions, and a failure to contain needed restrictive directions, would furnish color of authority for practices thereunder which would be destructive of rights most carefully guarded by the Constitution. Such a result would be still more easily accomplished by legislation in respect to one class of citizens or property, and separate legislation in regard to another class in

relation to the same subject, containing such differences in provisions as to necessarily bring about 'clear and hostile discriminations against peculiar persons and classes,' and resulting in oppressive and forced contributions from one class as compared with the other; and such is, or may be, practically the result of the legislation in this State in respect to tax assessments, according to the construction put upon that legislation by the defendants, *for, while boards of equalization are created with express power to equalize assessments in regard to other species of property, and required to do so, the separate enactments in relation to railroad and telephone properties confer upon the assessors and board of equalization no such power, according to their construction of the acts and their action thereunder.* The board of equalizers construe the statute as requiring them to take the curious and self-inconsistent position that they are created a board of equalization, but without power to equalize. * * * What must constitute a denial of the equal protection of the law will depend, in this view, in a large measure, upon what rights have been conferred, or protection extended, under the Constitution and laws of the particular State, in which the question arises. As the constitution and laws of the states vary, the proposition that each case must, to an extent, depend upon its own facts, is specially applicable to this class of cases. When the State itself undertakes to deal with its citizens by legislation, it does so under certain limitations, and it may not single out a class of citizens, and subject that class to oppressive discrimination, especially in respect to those rights so important as to be protected by constitutional guaranty." * * *

"It may be true that the proposition that a tax statute, or the tax laid under a statute, is in violation of the Constitution of the State, is not of itself necessarily sufficient

to constitute a violation of the Fourteenth Amendment; but when, in addition to the violation of the State Constitution, the statute results in an arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is such class legislation and such denial of the equal protection of the laws as renders it obnoxious to the Fourteenth Amendment. *And the State Constitution is important in determining what the rights of the citizen are, and whether equal protection of the law is being denied. If this be not so, the result is that the Fourteenth Amendment must be regarded as failing to afford protection in respect of the most important of all property rights, and the most dangerous of all powers."*

The opinion of Judge Clark in this case is referred to and approved in *Louisville Trust Co. vs. Stone*, 107 Fed., 305, 306, (C. C. A.)

The case was afterwards heard upon its merits upon the defendant's answer and evidence, the constitutional questions being purposely omitted, as stated by the Court, and an order was made in the complainant's favor, from this order an appeal was taken to the Court of Appeals, where the order was modified and affirmed.

In *Cotting vs. Kansas City Stock Yards Co.*, 183 U. S., 79, at page 110, Mr. Justice Brewer, delivering the opinion of the Court, says:

"It has been more than once said, judicially, that one of the principles upon which this government was founded is that of equality of right. It is emphasized in that clause of the Fourteenth Amendment which prohibits any State to deny to any individual the equal protection of the laws. That constitutional provision does not, it is true, invalidate legislation on the mere ground of inequality in

actual result. Tax laws, for instance, in their nature, are and must be general in scope, and it may often happen that in their practical application they touch one person unequally from another. *But that inequality is something which it is impossible to foresee and guard against, and therefore such resultant inequality in the operation of a law does not defeat its validity.*"

It can not be said that the inequality in the taxation of railroad properties under Act 173, and the other properties of the State, arising from the errors in the assessments of the properties by different officers, was impossible to foresee and guard against. It is plain to foresee and easy to guard against. Such inequality in the taxation of the different properties, *not taxed under said Act 173, arising from precisely such cause, was foreseen and guarded against by the provision for equalizing the assessments.*

In *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., this language is used (pp. 558, 559) :

"No rule can be formulated that will cover every case. But upon this general question we have said that the guaranty of the equal protection of the laws means '*that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.*' "

In the same case it is said (p. 560) :

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

10th. The right of the State to classify property for the purposes of taxation, and to impose different rates of taxation upon different properties is not questioned.

The contention is that the State can not by means of classification so frame its system of taxation as to deprive any class of taxpayers of their property without due process of law, or deny to them the equal protection of the laws.

When all the other taxpayers of ad valorem taxes are given a right of hearing before the legislative bodies which, by their action, determine the amount or rate of their taxation, the State can not by means of classification deprive the railroad companies of the like highly important right.

And when all such other taxpayers are furnished protection against unjust burdens of taxation arising from the failure of assessing officers to assess their property and the property of others upon the same basis by providing for such taxpayers an equalization of the assessments which determine the amount of their taxation, the State can not by means of classification deprive the railroad companies of like protection by means of equalization of the assessments which determine the amount of their taxation when, for lack of such protection, they will be subjected to like unjust taxation, and when by means of the like protection of equalization they will have like protection against such unjust taxation.

When the other taxpayers and the railroad companies may be unjustly taxed by reason of *the same assessments made by the same officers*, the State cannot by classification deny to the railroad companies the protection which it furnishes to the other taxpayers. The need for pro-

tection is the same in both cases, and in both cases the like means will furnish the like protection.

Real estate and properties devoted exclusively to agriculture may undoubtedly be classed by themselves for the purposes of taxation as well as may real estate and properties employed in the business of railroad transportation. But we submit that the proposition would not be entertained to uphold laws by which, under such classification, the properties employed in agriculture should have taken away from them the protection which they now have by the equalization of the assessments by which the amount of their taxation is determined and the protection which is now given them be given to the railroad companies.

11th. Since this suit has been instituted the legislature of Michigan has recognized the justice of the railroad companies' contention upon the subject of equalization and has, by Act No. 282, Laws 1905, Sections 13 and 14, p. 448, provided for an equalization by the State Board of Assessors of the other properties of the State paying ad valorem taxes and the railroad properties by empowering the State Board of Assessors to ascertain and determine *the true cash value of such other properties* for the purpose of determining the average rate of taxation levied upon those properties for the current year for state, county, township and municipal purposes, and the average rate of taxation of those properties upon the true cash valuation so determined by them is to be the rate of taxation of the railroad companies.

Said sections provide as follows:

Sec. 13. It shall be the duty of the said State Board of Assessors, not later than the fifteenth day of January, in each year, from the information contained in the reports required by the preceding section and from the in-

formation obtained by the members of said board, acting as members of the Board of State Tax Commissioners, under and by virtue of the authority conferred by act one hundred fifty-four of the public acts of eighteen hundred ninety-nine and the amendments thereof, and from such other information as may be obtained by said board or the members thereof from any other source, according to their best knowledge and judgment, to ascertain and determine the true cash value of all property of the State, other than that included upon said assessment roll, upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes for the current year, and shall enter the same upon its records forthwith, and not later than the fifteenth day of January in each year, the said Board of Assessors shall ascertain and determine the average rate of taxation levied upon such other property for the then current year by dividing the aggregate amount of ad valorem taxes levied upon such other property in the State for such purposes, as shown by the reports required by the preceding section, by the aggregate true cash value of such other property of the State, as determined by said board, which said rate so arrived at and determined shall be entered upon the records of the board. * * *

Sec. 14. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll, opposite the descriptions of their respective properties.

VII.

Said Act No. 173 denies to the companies, under its provisions, the equal protection of the laws in this: ~~That under its provisions, the equal protection of the laws is this:~~ That under the general laws of Michigan in the assessment of the personal property of the inhabitants of the State (other than the companies taxed under said act), the credits of such persons are assessed only so far as they exceed the amounts owed by such persons, whereas said Act No. 173 requires the assessment and taxation of the credits of said companies at their cash value without any deduction of the indebtedness owed by them. That is to say, the value of the personal property of said inhabitants consisting of credits is to be determined by deducting from the amount of the credits the amount of such person's indebtedness, whereas under said Act No. 173, in determining the value of the personal property of the companies consisting of credits no deduction of the indebtedness of the companies is allowed.

The Constitution of the State requires all assessments of property, not only of natural persons, but also of all corporations, to be at its cash value. Article XIV, Section 12 and Section 10.

Section 12 provides as follows: "All assessments hereafter authorized shall be on property at its cash value."

Section 10 provides as follows: "The legislature may provide for the assessment of property of corporations at its true cash value, by a State Board of Assessors, and for the levying and collection of taxes thereon."

The Constitution is imperative, as before pointed out, that taxation of all property which is made upon the basis

of valuation shall be made upon an assessment at the cash value thereof.

There is no opportunity for a distinction between natural persons and railroad companies upon that subject, yet by Act No. 173 the distinction is made.

1st. By said Section 5 of said act the property of the companies required to be assessed includes "all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road-bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch-boards, and all other property used in carrying on the business of said corporations, or owned by them respectively, and all other real and personal property."

Section 6 requires railroad companies to make and file with the State Board of Assessors a statement showing "A detailed statement of the personal property, *including moneys and credits owned by the company in Michigan*, on the second Monday in April in the year in which the report is made, where situate, and the value thereof."

Section 7 imposes a penalty upon any company which refuses or neglects to file such report.

Section 8 provides that, "Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in section four of this act, upon which they shall assess *at the true cash value on the second Monday of April of the year in which the assessment is made all the property* of the companies herein enumerated subject to taxation under this act, which

said assessments shall not be final until reviewed as hereinafter provided."

Section 10 provides for the review and that "any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application, or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll may subpoena witnesses as provided in section three of this act and have such hearing as may be deemed necessary. * * * After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided."

Section 18 provides that "if said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each."

It is a distinct and positive requirement of the act that the personal property of the railroad companies "includ-

ing credits owned by the company" shall be assessed at the cash value of the property, *including the cash value of the credits*. Upon this subject there is no discretion on the part of the State Board of Assessors. Their plain duty is to ascertain the cash value of the credits and assess them at that value, and if they assess the credits at less than they believe the true cash value to be they will be guilty of a misdemeanor.

The act is complete, covering the entire proceedings for the assessment of the companies' properties and the levy and collection of taxes.

There is no provision by which the companies are allowed to state or show their indebtedness, and if shown in any manner the State Board of Assessors are forbidden to consider them. They can no more consider them in determining the cash value of the companies' personal property or credits than they can consider them in determining the cash value of the companies' real estate.

The companies' indebtedness is as distinct and separate from their personal property and credits as from their real estate.

2nd. The general statute of the State by which the property of the State not included in said Act No. 173 is assessed for ad valorem taxes which was in force when said act was adopted and is still in force, authorizes the local assessors in determining the cash value of the personal property of natural persons, *consisting of credits*, to deduct from the amount of the credits the amount of the person's indebtedness, and authorizes the person assessed to state his indebtedness.

1 Comp. Laws, Secs. §324, §331, Subd. 6, Secs. §341, §342, Subd. Personal Property, Credits, 2, 3, Sec. §347.

(The provisions of the above sections are copied in the Appendix D).

The assessments of natural persons are in fact made as provided in the general statute by deducting indebtedness from credits. This has been so long both the statute and the practice in the State that the Courts take judicial notice that the assessments are so made.

3rd. The granting to natural persons under the general statute the right to have the cash value of their personal property which consists of credits to be determined by deducting from the amounts of the credits the amount of their indebtedness and withholding that right from the companies under said Act No. 173 is a denial of the equal protection of the laws.

County of Santa Clara vs. So. Pac. R. R. Co., 18 Fed., 385,
at 395, 396.

The Railroad Tax Cases, 13 Fed., 742, at 737.

Russell vs. Cro9, 164 Mo., 60.

63 S. W., 853.

Detroit Citizens' St. Ry. Co. vs. Common Council of Detroit,
125 Mich., 673, at 694.

In *County of Santa Clara vs. Southern Pacific R. Co.*, 18 Fed., 385, the Constitution of California provided that in assessing property which was incumbered by mortgage the value of the mortgage was to be deducted from the value of the property mortgaged and the balance assessed to the owner of the property, except as to railroad and other *quasi* public corporations, whose property was assessed to them at its value without deducting the value of any mortgage thereon.

Holding the provisions of the Constitution invalid, as a denial of the equal protection of laws, Mr. Justice

Field uses this language upon this subject (pp. 395, 396) :

"The principle which sanctions the elimination of one element in assessing the value of property held by one party, and takes it into consideration in assessing the value of property held by another party, would sanction the assessment of the property of one at less than its value,—at a half or a quarter of it,—and the property of another at more than its value,—at double or treble of it,—according to the will or caprice of the State. To-day railroad companies are under its ban, and the discrimination is against their property. To-morrow it may be that other institutions will incur its displeasure. If the property of railroad companies may be thus sought out and subjected to discriminating taxation, so, at the will of the State, by a change of its Constitution, may the property of churches, of universities, of asylums, of savings banks, of insurance companies, of rolling and flouring mill companies, of mining companies, indeed, of any corporate companies existing in the State. The principle which justifies such a discrimination in assessment and taxation, where one of the owners is a railroad corporation and the other a natural person, would also sustain it where both owners are natural persons. A mere change in the State Constitution would effect this if the federal Constitution does not forbid it. Any difference between the owners whether of age, color, race, or sex, which the State might designate, would be a sufficient reason for the discrimination.

In *The Railroad Tax Cases*, 13 Fed., 722, the same distinction was involved in the assessment of the property of railroad companies and of other persons. Mr. Justice Field says (p. 737) :

"The discrimination complained of arises from the dif-

ferent rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixed the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property than upon the property of individuals similarly incumbered, or rather requires the assessor of the defendant's property, in estimating its value, to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value. It is not classifying property to provide that the property of certain parties, which has a mortgage upon it, shall be assessed at its value after deducting the mortgage; and that the property of other parties, also having a mortgage upon it, shall be taxed at its full value without any deduction. That is not providing for a different rate of taxation for different kinds of property, but for unequal taxation according to the character of the owner."

Circuit Judge Sawyer upon the same subject says (p. 773):

"If the arbitrary discrimination and classification found in this case can be legally made under the Constitution and the law of the land, then the Constitution or the law can be so framed as to dispose of a man's rights in property of all kinds by arbitrary classification and definition, without regard to the real facts, circumstances, or

condition of the property. A person may be classified and defined out of the equal protection of the law; and if so with reference to this provision, he can also be classified and defined out of uniformity in the operation of the law in other particulars; out of the protection of due process of law, and of the provision forbidding a law impairing the obligation of contracts, or taking property for public use without just compensation; and, indeed, out of all the guaranties of the Constitution, State or National."

In *Russell vs. Croy*, 164 Missouri, 69, an amendment to the Constitution of Missouri contained a like provision for deducting the value of a mortgage from the value of the property covered by the mortgage in assessment for taxation, except in the case of railroad and other *quasi* corporations, and the provision was held invalid by the Supreme Court, following the decisions in the 13 Federal and 18 Federal above cited.

In *Citizens' Street Railway Co. vs. Common Council*, 125 Michigan, 673, the company was one of the companies which is within the provisions of said Section 3842 of the general tax law providing for the assessment of the *personal property* of corporations by deducting from the cash value of their *personal property* the total of all their bona fide indebtedness, except indebtedness for current expenses, while by said Section 3831 the amount of an individual's indebtedness could be deducted only from *his credits*.

The Court held said provision of Section 3842 invalid (p. 694): "Because not uniform with the general method of deducting debts, viz.: from credits only."

That case is plainly a case in which the rate of taxation

which was imposed upon the personal property of the companies by the statute was the same as the rate of taxation imposed upon the personal property of natural persons, but the amount of taxation was made unequal, because in determining the cash values of the companies' personal property a deduction of their indebtedness was made, while in determining the cash value of the personal property of natural persons no deduction of indebtedness was allowed, except as to such personal property as consists in credits.

In the case of natural persons the *cash value* of personal property was made the basis of assessment, and in the case of the Street Railway Companies the basis of assessment was not the *cash value*, but from the cash value was deducted the debts, while the Constitution requires all assessments to be at the cash value.

It presented a case where there was not an equal protection of the law, or where there was not a protection of equal laws.

It is submitted that if the provision of Section 3842 is invalid the provisions of said Act No. 173 are invalid for precisely the same reasons. The same requirements of the Constitution that all assessments shall be made at cash value applies to railroad companies and to natural persons.

By the general statute (said Section 3831, Subd. 6) the cash value of credits of private persons is determined to be the amount of the credits *less the indebtedness*, while by Act No. 173 the personal property of the railroad companies, *including the credits*, is required to be assessed at its cash value, and no deduction for indebtedness is allowed.

The purpose and provisions of Act No. 173 require the assessment of the credits of the railroad companies at

their true cash value, and forbid any other value to be adopted.

It could not be of any avail to the companies to make any showing to the State Board of Assessors relating to their indebtedness, and they were therefore not required to attempt any such showing.

Hills vs. Exchange Bank, 105 U. S., 319,

Whitbeck vs. Mercantile National B'k, 127 U. S., 193

In the cases upon this subject of *Stanley vs. Supervisors of Albany*, 121 U. S., 535, and *Supervisors vs. Stanley*, 105 U. S., 305, there was opportunity for the parties complaining of the assessments to make a showing to the assessors of their indebtedness, and there was authority in the assessors to make the deduction, and a correction of the assessment could thereby be made.

4th. By reason of the provision requiring the credits of the railroad companies to be assessed at their full cash value and allowing no deduction for credits being invalid, either the entire act fails or so much of the act as requires the credits of the companies to be assessed at all fails.

That provision of the act can not be retained in part, and rejected in part, nor can a clause or provision be added to it by the Court. No other assessment can be made of the credits than at their full cash value and comply with the terms of the act.

The entire provision for their assessment must therefore be held void because the omission of them from the assessment by the State Board of Assessors upon any other ground is forbidden, and would be a misdemeanor on the part of the members of the board.

It is very clear that it is the intent of the act that the assessment of the railroad company's property shall

include the company's property which consists in its credits.

The presumption can not be admitted that the legislature would have adopted legislation for the taxation of railroad companies in which their property consisting of credits would be exempted wholly from taxation. As the act can not be enforced without such omission, and as thereby the purpose of the legislation would be defeated the act falls.

VIII.

The taxation under the provisions of said Act No. 173 is not authorized by the power reserved to the State to alter, amend or repeal the statutes under which the railroad companies were organized.

The act applies to the properties which had been previously acquired by the railroad companies and were possessed and owned by them at the time of the adoption of the act.

It is not questioned that in authorizing the formation of corporations and granting to them their operating franchises, the State may impose such conditions in respect to taking by taxation the properties of the corporations thereafter to be acquired by them as the legislature may from time to time deem proper, but the State under said reserved power to alter or amend does not possess the same power of taxation in respect to the property of the corporations which has been acquired by them under charters which were free from such conditions.

As to property so acquired, the corporations are entitled to the same protection of due process of law, and the

equal protection of the laws which natural persons have in respect to their property.

There can be no taxation of such property of the corporations under the reserved power of amendment or alteration which does not afford such protection.

Sinking-Fund Cases, 99 U. S., 700, at 720,

Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 362, at 399,

St. Louis &c. R. Co. vs. Paul, 173 U. S., 404, at 408,

Lake Shore &c. R. Co. vs. Smith, 173 U. S., 684, at 690,

Louisville &c. Ferry Co. vs. Kentucky, 188 U. S., 385, at 398,

Greenwood vs. Freight Co., 105 U. S., 13, at 19,

Detroit vs. Detroit &c. Plank Road Co., 43 Mich., 140, at 147,

148,

People vs. Lake Shore &c. R. Co., 52 Mich., 277, at 286,

Commonwealth vs. Essex Co., 13 Gray, 239, at 253,

People vs. O'Brien, 111 N. Y., 1.

Amendments made to govern corporations in the exercise of their operating franchises have been sustained in numerous cases cited upon the part of the defense in the discussion of this suit, but they do not involve the questions presented by the scheme of taxation against which the complainant protests.

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APPENDIX A.

Provisions of Act No. 173, entitled, "An Act to provide for the assessment of the property of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes."

Section 1. That the Board of State Tax Commissioners created under the laws of this State, shall ex officio constitute a State Board of Assessors, one of whom shall be elected chairman of said board.

Section 2. The secretary of the Board of State Tax Commissioners shall be ex officio secretary of the State Board of Assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act: *Provided*, That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed, per annum: *Provided further*, That said board may employ such other assistance as may be necessary, with the consent of the Governor and the Board of State Auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act, shall be allowed by the Board of State Auditors upon proper vouchers approved by the chairman and secretary of the

board, and paid by the State Treasurer out of the general fund.

Section 3. Said board shall have access to all books, papers, documents, statements and accounts, on file or of record in any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. It shall have the right to subpoena witnesses, upon a subpoena signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpoenas may be served by any person authorized to serve subpoenas from Courts of record in this State, and the attendance of witnesses may be compelled by attachment, to be issued by any Circuit Court in this State, upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this State to witnesses in the Circuit Court, to be allowed by the Board of State Auditors upon the presentation of a copy of such subpoena, with the number of days' service and mileage endorsed thereon and approved by a member of said Board of Assessors, or the secretary thereof. The person serving such subpoena shall receive the same compensation now allowed to sheriffs or other officers for serving subpoenas. Said board shall have power to examine witnesses under oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corpora-

tion, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the State, the sum so forfeited to be recovered in a proper action brought in the name of the people of the State of Michigan, in any Court of competent jurisdiction.

Section 4. It shall be the duty of said board to make an annual assessment upon an assessment roll to be prepared by said board, of the property having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, express companies doing business within this State, car loaning companies, and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.

Section 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road-bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch-boards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the

other property: *Provided however*, That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in which the same may be situate. The term company, corporation or association, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term "property having a situs in this State" shall include all the property real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.

Section 6. The several corporations enumerated in this act doing business in this State, shall annually, between the first and thirtieth days of June in each year, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, make and file with the State Board of Assessors, in such form as said board may provide, upon blanks to be furnished by said board, a statement containing the following facts:

Railroad, Union Station and Depot Companies.

The blanks furnished to railroad and union station and depot companies, shall provide for the following information:

First. The name of the company;

Second. The nature of the company, and under the laws of what State or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth. The number of shares of capital stock;

Seventh. The par value and market value, or if there be no market value, the actual value, of the shares of stock on the second Monday of April of the year in which the report is made;

Eighth. A detailed statement of the real estate owned by the company in Michigan, and where situate, and the value thereof;

Ninth. A detailed statement of the personal property, including moneys and credits owned by the company in Michigan, on the second Monday in April in the year in which the report is made, where situate, and the value thereof;

Tenth. The total value of the real estate owned by the company situate outside of Michigan;

Eleventh. The total value of the personal property of the company situate outside of Michigan;

Twelfth. The whole length of their lines, and the length of so much of their lines as is within or is without Michi-

gan, which lines shall include what said railroad companies control and use as owners, lessees, or otherwise;

Thirteenth. A statement of the entire gross receipts of the companies, from whatever source derived, for the year ending the second Monday of April in the year for which the report is made;

Fourteenth. Such other facts and information as said board may require, in the form of the returns prescribed by it.

Express Companies.

The blanks furnished to express companies shall provide for the following information:

First. The name of the company;

Second. The nature of the company and under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in the State of Michigan;

Sixth. The number of shares of capital stock, (a) authorized, (b) issued;

Seventh. The par value and market value, or if there be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the second Monday of April of the year for which the report is made;

Eighth. The situation, income and value in detail of its real estate in this State;

Ninth. The total income from and cash value of all its real estate situated outside of this State;

Tenth. A full and correct inventory, at the true cash value, of its personal property, including moneys and credits, within this State;

Eleventh. The true cash value of all its personal property, including money and credits without this State;

Twelfth. The whole length and names of railroad lines and water and stage routes over which it did business, and separately, in detail, the portions of such lines and routes within this State, and the portion of such routes over navigable waters of the United States within this State;

Thirteenth. Such other facts and information as may be deemed necessary by the State Board of Assessors, or any member thereof, to the proper assessment of the property of such company.

Car Loaning, Stock Car, Refrigerator and Fast Freight Line Companies, and other Car Companies.

The blanks furnished to car loaning, stock car, refrigerator and fast freight line companies shall provide for the following information:

First. The corporate name of the company;

Second. The nature of the business of said company, and under the laws of what State or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The location of its principal office in the State of Michigan, together with the name and address of the chief officer or managing agent of the company in Michigan;

Sixth. The total number of cars and rolling stock of any such corporation run over or operated upon any line or

lines of railroad within this State each day during the entire year preceeding the date of making and filing such report;

Seventh. The cost of construction of each of said cars;

Eighth. The length of time the same has been in service;

Ninth. The cash value of each of said cars so operated and run in this State, at the time of making and filing such report;

Tenth. And such other and additional information as may be deemed necessary by said board, or any member thereof, to the proper assessment of the cars of such company in this State in accordance with the provisions of this act and to the performance of the duties imposed upon it hereby.

Section 7. Blanks for making the statements provided for in section six shall be furnished to such companies on making application to said board: *Provided*, That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the board shall inform itself as best it may on the matters necessary to be known, in order to discharge its duties with respect to the assessment of the property of such company. Any company which shall refuse or neglect to make the report required by this act within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the State of Michigan in any Court of competent jurisdiction.

Section 8. Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of December in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in section four of this act, upon which they shall assess at the true cash value on the second Monday of April of the year in which the assessment is made, all the property of the companies herein enumerated subject to taxation under this act, which said assessments shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and the true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of such companies filed in the office of any officer of this State, and such other evidence as may be obtainable bearing thereon. In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State, the said board shall be guided in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State. In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebtedness of such express company. From the amount so obtained and determined, said board shall deduct the actual value of all real estate owned by it as ascertained by said board, and the actual value of all its

personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: The said board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did business, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the united State within this State, to which result shall be added the value of all real estate owned by such express company in this State, as determined by said board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State. In ascertaining the cash value of the property of car loaning, stock car, refrigerator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding the date of the filing of the report mentioned in the preceding section, such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.

Section 9. Upon said assessment roll, after the names of each of the companies assessed thereon, shall be placed

a general description of the properties of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies, such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State Board of Assessors." In the case of car loaning, stock car, refrigerator and fast freight line and other car companies, the following general description may be used: "Cars subject to taxation by a State Board of Assessors." In the case of express companies, the following general description may be used: "Property subject to taxation by a State Board of Assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of said companies so assessed.

Section 10. On the third Monday of December in each year, it shall be the duty of the State Board of Assessors to meet at the State Capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in section three of this act,

and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in sections eight and nine of this act: *Provided*, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially, and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations, changes, corrections and additions made in or to the assessment or valuation of the property appearing on said roll.

Section 11. It shall be the duty of the county clerk in each county in this State, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later than the first day of November in each year, to make a report, duly certified to the State Board of Assessors, of the record of such equalization and of the record

required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred and ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county for state, county, municipal, township, school and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this State governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the State Board of Assessors of all ad valorem taxes raised in any of said municipalities, which have not been reported to the board of supervisors for the purposes of equalization and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said State Board of Assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officer, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this State; and the said board, in addition thereto, may require such reports on blanks which it shall prepare and furnish therefor, from

all county, state and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor or assessing officer who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recovered in a proper action in the name of the people of the State of Michigan, in any Court of competent jurisdiction.

Section 12. As soon as the reports required by the preceding section to be filed have been filed, or the information therein required to be procured shall have been procured, and not later than the fifteenth day of December in each year, the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.

Section 13. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties. After the completion of said tax roll, and prior to the first day of February in each year, the said board shall attach thereto a certificate signed by the members of the board, or a majority thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast

freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for state, county, township, school, municipal and other purposes, levied through the State during the present year, as determined by us." The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of March following the assessment and levy thereof, and shall be in lieu of all taxes for State and local purposes, not including special assessments on property particularly benefitted, made in any county, city, village or township. All taxes not paid before the first day of April in the year in which the same are payable shall bear interest at the rate of one per cent. per month thereafter. The taxes so extended against said companies shall become forthwith a debt due from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, from the time of the extension until the payment thereof, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the State Board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in

the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property under the provisions of this act for the purposes provided for in this act; and the said warrant shall authorize and command the Auditor General, in case any corporation named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of such sale as provided for in the general laws of this State for the sale of property seized for taxes and offered for sale: *Provided*, He may bring an action in the name of the people of the State of Michigan in any Court of competent jurisdiction in the State of Michigan, or in any other state, for the enforcement of said lien, and upon recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in Courts of Record.

Section 14. If any Court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of the average rate of taxation required to be ascertained and determined by said State Board of Assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of the said State Board of Assessors, whether any part of the taxes assessed and levied have been paid or not, to re-determine and re-asertain the average rate of taxation throughout the State in accordance with law, and when such re-determination and re-ascertainment has been had, to make a duplicate of the

original assessment roll and to extend the taxes thereon according to such re-determined and re-ascertained average rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the re-determination and re-ascertainment of such average rate and for the extension and collection of taxes upon said duplicate assessment roll shall be conducted in the method originally provided for, so far as may be. Whenever any sum or part thereof levied upon any property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the re-assessment upon said property, and the re-assessment to that extent shall be deemed to be satisfied.

Section 15. No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any Court of this State on account of any irregularity in any assessment or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this State is in accordance with the Constitution and statutes of this State.

Section 16. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest

and principal of the State debt, in the order herein recited until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: *Provided, however,* That if any of the corporations, companies or associations herein named were not paying specific taxes to this State on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the State.

Section 17. The first assessment under this act shall be made as herein required in the year nineteen hundred and two. Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July in the year nineteen hundred and one, and on the first day of July in the year nineteen hundred and two, under the general laws upon the property or business of such companies operated within this State. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxes levied thereunder for the year nineteen hundred and one and previous years.

Section 18. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail

not exceeding one year, or by a fine not exceeding five thousand dollars each.

Section 19. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the State of Michigan, in any Court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

Section 20. All other acts or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, or in any other law of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, are hereby repealed, except as herein expressly stated: *Provided however*, That all rights which the State now has under any of said acts, for taxes or penalties, shall not in any way be affected by this act, and shall not constitute a bar to any prosecution or recovery on account of such taxes or penalties.

APPENDIX B.

Provisions of 1 Compiled Laws of Michigan for supplying cities and villages with water.

Sections 2890, 2891, 3247, 3248, 3416.

Section 2890. Any village having a resident population of five hundred or over shall have authority to purchase or construct and maintain water works for the introduction of water into the village and supplying the village and the inhabitants thereof with pure and wholesome water; for the extinguishment of fires; the ordinary and extraordinary uses of the inhabitants thereof and for such other purposes as the council may prescribe.

Section 2891. The village may acquire, purchase, erect and maintain such reservoirs, canals, aqueducts, sluices, buildings, engines, water wheels, pumps, hydraulic machines, distributing pipes and other apparatus, appurtenances and machinery, and may acquire, purchase, appropriate and own such grounds, real estate, rights and privileges as may be necessary and proper for the securing, construction, and maintenance of such water works.

Section 3247. Any city incorporated or re-incorporated under the provisions of this act, shall have authority to purchase or construct new and to maintain and extend existing water works for the introduction of water into such city, and supplying the same and the inhabitants thereof with pure and wholesome water for the ordinary and extraordinary uses of the inhabitants thereof, the extinguishment of fires and for such other purposes as the council may prescribe.

Section 3248. Such city may acquire, purchase, erect and maintain such reservoirs, canals, aqueducts, sluices,

buildings, engines, water wheels, pumps, hydraulic machines, distributing pipes and other apparatus, appurtenances and machinery, and may acquire, purchase, appropriate and own such grounds, real estate, rights and privileges as may be necessary and proper for the securing, construction and maintenance of such water works.

Section 3416. *The People of the State of Michigan enact*, That it shall be lawful for any city or incorporated village in this State to borrow any sum of money to be used exclusively for the purpose of purchasing grounds, rights, privileges, materials, and in making improvements connected with, and for the sole purpose of supplying such city or village, and the inhabitants thereof, with water: Provided, That the total sum borrowed and raised by tax by any such municipality the first year shall not exceed ten per cent. of the assessed valuation of such municipality as contained in the last preceding assessment roll of the same; And provided, That no more than five per cent. shall be borrowed during any one year thereafter, and that the rate of interest shall not exceed ten per cent. upon any indebtedness contracted under the provisions of this act.

Provisions for supplying cities and villages with gas, electric and other lights.

Sections 3440, 3437.

Section 3440. *The People of the State of Michigan enact*, That it shall be lawful for any city or incorporated village in this State not having more than ten thousand inhabitants, which now own and operate works for the purpose of supplying such city or village with electric light and lighting their streets and other public places with electric light, to furnish and supply electric light to

the inhabitants of such cities or villages upon such terms and under such conditions as the common council may deem expedient.

Section 3437. *The People of the State of Michigan enact*, That it shall be lawful for any city or incorporated village in this State, to acquire by purchase, or to construct, operate and maintain, works for the purpose of supplying such cities or villages and the inhabitants thereof with gas, electric or other lights, or to contract for the furnishing thereof, at such times and on such terms and conditions as the common council of any such city or the board of trustees in any such village shall direct.

Provisions by which cities and villages may purchase rights of toll road companies.

Section 3446. *The People of the State of Michigan enact*, That any city or village of the State in which any toll road company has the right to maintain gates or collect toll on any street or highway within said city or village may purchase all the rights of said company in such street or highway, at a valuation to be agreed upon between the common council of the city or village and the board of directors of such toll road company.

Provisions for establishing Fire Departments.

Section 2878. The council shall have power to enact such ordinances and establish and enforce such regulations as they shall deem necessary to guard against the occurrence of fires and to protect the property and persons of the citizens against damage and accident resulting therefrom; and for this purpose to establish and maintain a fire department; to organize and maintain fire companies; to employ and appoint firemen; to make and

establish rules and regulations for the government of the department, the employes, firemen and officers thereof; and for the care and management of the engines, apparatus, property, and buildings pertaining to the department.

Section 2879. The council may purchase and provide suitable fire engines and apparatus for the extinguishment of fires; and may sink wells and construct cisterns and reservoirs in the streets, public grounds, and other suitable places in the village, and make all necessary provisions for a convenient supply of water for the use of the department.

Section 2880. The council may also provide or erect all necessary buildings for keeping the engines, carriages, teams and fire apparatus of the department.

Section 3277. The council of any city shall have power to enact such ordinances and establish and enforce such regulations as they shall deem necessary to guard against the occurrence of fires, and to protect the property and persons of the citizens against damage and accident resulting therefrom; and for this purpose to establish and maintain a fire department; to organize and maintain fire companies; to employ and appoint firemen; to make and establish rules and regulations for the government of the department, the employes, firemen and officers thereof; and for the care and management of the engines, apparatus, property and buildings pertaining to the department; and prescribing the powers and duties of such employes, firemen and officers.

Section 3278. The council may purchase and provide suitable fire engines and such other apparatus,

instruments and means for the use of the department as may be deemed necessary for the extinguishment of fires; and may sink wells and construct cisterns and reservoirs in the streets, public grounds and other suitable places in the city; and make all necessary provisions for a convenient supply of water for the use of the department.

Section 3279. The council may also provide or erect all necessary and suitable buildings for keeping the engines, carriages, teams and fire apparatus of the department.

Provisions for acquiring and maintaining parks, public grounds, buildings and markets.

Section 2772. Any village may acquire, purchase and erect such public buildings as may be required for the use of the corporation, and may purchase, appropriate, and own such real estate as may be necessary for public grounds, parks, markets, public buildings, and other purposes necessary or convenient for the public good, and for the execution of the powers conferred in this act; and such building and grounds, or any part thereof, may be sold at public sale, or leased, as occasion may require; provided, however, That no public parks shall be sold without the consent of a majority of the qualified electors of the village.

Section 3152. Any city may acquire, purchase and erect all such public buildings as may be required for the use of the corporation, and may purchase, acquire, appropriate and own such real estate as may be necessary for public grounds, parks, markets, public buildings, and other purposes necessary or convenient for the public good, and the execution of the powers conferred in this act; and such

buildings and grounds, or any part thereof, may be sold, leased and disposed of as occasion may require.

Section 3153. When the council shall deem it for the public interest, grounds and buildings for city prisons, work-houses and other necessary public uses, may be purchased, erected and maintained beyond the corporate limits of the city; and in such cases the council shall have authority to enforce beyond the city limits, and over such lands and buildings and property, in the same manner and to the same extent as if they were situated within the city, all such ordinances and police regulations as may be necessary for the care and protection thereof, and for the management and control of the persons kept and confined in such prisons, work-houses or hospitals.

Provisions for Libraries and Reading Rooms.

Sections 3107, sub. 38, and 3449, 3458, and
2 Compiled Laws, Sections 4757, 4763.

Section 3107, sub. 38. Every city incorporated under the provisions of this act, shall, in addition to such other powers as are herein conferred, have the general powers and authority in this chapter mentioned; and the council may pass such ordinances in relation thereto, and for the exercise of the same, as they may deem proper, namely:

Thirty-eight. To establish and maintain a public library, and to provide a suitable building therefor, and to aid in maintaining such other public libraries as may be established within the city by private beneficence as the council may deem to be for the public good.

Section 3449. *The People of the State of Michigan enact*, That the city council of each incorporated city shall have power to establish and maintain a public library and

reading room, for the use and benefit of the inhabitants of such city, and may levy a tax of not to exceed one mill on the dollar annually on all the taxable property in the city, such tax to be levied and collected in like manner with other general taxes of said city, and to be known as the "library fund."

Section 3458. When fifty voters of any incorporated village or township shall present a petition to the clerk of the village or township, asking that a tax may be levied for the establishment of a free public library, in such village or township, and shall specify in their petition a rate of taxation, not to exceed one mill on the dollar, such clerk shall, in the next legal notice of the regular annual election in such village or township give notice that at such election every voter may vote "for a mill tax, for a free public library," or "against a mill tax, for a free public library," specifying in such notice the rate of taxation mentioned in such petition; and if the majority of all the votes cast in such village or township shall be for the tax for a free public library, the tax specified in such notice shall be levied and collected in like manner with other general taxes of said village or township, and shall be known as the "library fund;" and when such free public library shall have been established, and a board of directors elected and qualified, as hereinafter provided, it shall be the duty of such board of directors, on or before the first Monday of September in each year, to prepare an estimate of the amount of money necessary for the support and maintenance of such library for the ensuing year, not exceeding one mill on the dollar of the taxable property of such village or township, and report such estimate to the assessor of such village, or the supervisor of such township, for assessment and collection, the same as other

village or township taxes, and the same shall be so assessed and collected; and the corporate authorities of any such villages or townships may exercise the same powers conferred upon the corporate authorities of cities under this act.

Section 4757. Any school district, by a two-thirds vote at any annual meeting, may establish a district library, and such district shall be entitled to its just proportion of books from the library of any township in which it is wholly or partly situated, to be added to the district library, and also to its equitable share of any library moneys remaining unexpended in any such township or townships at the time of the establishment of such a district library, or that shall thereafter be raised by tax in such township or townships, or that shall thereafter be apportioned to the township to the inspectors of which the annual report of its director is made.

Section 4763. The qualified voters of each township shall have power at any annual township meeting, to vote a tax for the support of libraries established in accordance with the provisions of this act, and the qualified voters of any school district, in which a district library shall be established, shall have power, at any annual meeting of such district, to vote a district tax for the support of said district library. When any tax authorized by this section shall have been voted, it shall be reported to the supervisor, levied and collected in the same manner as other township and school district taxes.

Provisions for erecting soldiers' monumental buildings.

Section 1700. *The People of the State of Michigan enact*, That whenever any township, incorporated village, or

city, or county, in which a soldiers' monumental building is proposed to be erected by any post or posts, or the department of Michigan, of the order know as the grand army of the republic, shall desire to unite with such post or department in the erection of such building for township, village or city purposes, such township, village or city shall have the right to aid and assist in the construction and building of the same to the same extent as though such (building) buildings were to be used solely for such township, village and city or county purposes, and such township, village, city or county shall have power, and they are hereby authorized to contract with any such post or department, whenever the same shall have been incorporated, and thereby determine the proportions the said township, village, city or county shall pay towards the construction of said building, the architecture and arrangement of the same, and the separate portions respectively which shall be occupied or used by the respective parties to such contract.

Section 1702. It is further provided that the township, village, city or county so uniting in the erection of any such building may raise the funds necessary for the same in the same manner and to the same extent as is now provided by law for the building of municipal buildings.

Provisions for maintaining and adorning cemeteries.

Section 2824. The council may, within the limitations in this act contained, raise and appropriate such sums as may be necessary for the purchase of cemetery grounds, and for the improvement, adornment, protection and care thereof.

Section 3132. Any city may acquire, hold and own such

cemetery or public burial place or places, either within or without the limits of the corporation, as in the opinion of the council shall be necessary for the public welfare, and suitable for the convenience of the inhabitants, and may prohibit the interment of the dead within the city, or may limit such interments therein to such cemetery or burial place as the council may prescribe; and the council may cause any bodies buried within the city in violation of any rule or ordinance made in respect to such burials to be taken up and buried elsewhere.

Section 3133. The council may, within the limitations of this act contained, raise and appropriate such sums as may be necessary for the purpose of cemetery grounds and for the improvement, adornment, protection and care thereof.

Provisions by which municipalities are made liable for damages arising from defective streets, sidewalks and bridges.

Section 3441. *The People of the State of Michigan enact*, That any person or persons sustaining bodily injury upon any of the public highways or streets in this State by reason of neglect to keep such public highways or streets, and all bridges, sidewalks, cross-walks and culverts on the same in reasonable repair, and in condition reasonably safe and fit for travel by the township, village, city or corporation whose corporate authority extends over such public highway, street, bridge, sidewalk, cross-walk or culvert, and whose duty it is to keep the same in reasonable repair, such township, village, city or corporation shall be liable to and shall pay to the person or persons so injured or disabled just damages to be recovered in an action of trespass on the case before any Court of competent jurisdiction.

Section 3442. If any horse or other animal, or any cart, carriage or vehicle, or other property, shall receive any injury or damage by reason of neglect by any township, village, city or corporation to keep in repair any public highway, street, bridge, sidewalk, cross-walk or culvert, the township, village, city or corporation whose duty it is to keep such public highway, street, bridge, sidewalk, cross-walk or culvert in repair shall be liable to and shall pay the owner thereof just damages, which may be recovered in an action of trespass on the case before any Court of common jurisdiction; Provided, That in all actions brought under this act it must be shown that such township, village or city has had reasonable time and opportunity after knowledge by or notice to such township, village or city that such highways, streets, bridges, sidewalks, cross-walk, or culvert have become unsafe, or unfit for travel to put the same in the proper condition for use, and has not used reasonable diligence therein after such knowledge or notice.

APPENDIX C.

Provisions of Act No. 154, of Laws of Michigan of 1899, as amended by Act No. 174 of Laws of 1901, relating to Board of State Tax Commissioners.

Act 174, Laws of 1901, Section 145. It shall be the duty of the Governor, by and with advice and consent of the senate, within five days after this act shall have been approved by the Governor, to appoint two resident freeholders of this State, who shall be duly qualified electors thereof, and who, together with the three persons now con-

stituting the Board of State Tax Commissioners, shall hereafter constitute a Board of State Tax Commissioners, with powers and duties as prescribed under the provisions of this act, one of whom so appointed shall hold office until the thirty-first day of December, nineteen hundred four, and one of whom so appointed shall hold office until the thirty-first day of December, nineteen hundred six, and until their successors shall have been appointed and shall have qualified. Thereafter the successors of each member of said Board of State Tax Commissioners shall be appointed by the Governor, and shall hold office for the term of six years, and until their successors shall have been appointed and qualified. The persons who now constitute the Board of State Tax Commissioners under appointments heretofore made shall continue to hold their office until the expiration of their respective terms. At the expiration of the terms of office of the members of said board, their successors in office, so long as this act shall remain in force, shall be appointed by the Governor, by and with the advice and consent of the Senate. All appointments which are provided to be made by the Governor under this section of this act shall be made while the legislature is in session, and not at any other time, except in cases where a vacancy in office shall occur otherwise than by the expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the Governor shall have power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Act 154, Laws 1899, Section 146. Said board shall elect a secretary at a salary not to exceed fifteen hundred dollars per annum. The person so elected shall hold his office dur-

ing the pleasure of said board and shall keep a record of all the proceedings of said board, which records with all other papers or proceedings of said board shall be a part of the records of the Auditor General's office, and of which the Auditor General shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session, shall perform such duties as may have been assigned him by said board.

Section 147. The members of said board, and the secretary thereof, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State. The members of said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office, and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the Board of State Auditors, and paid monthly by the State Treasurer, out of the general fund.

Section 148. Regular sessions of said board shall be held at the office of said board at the capital, to be furnished by the Board of State Auditors. The said board and the members thereof shall have access to all books, papers, documents, statements and accounts on file or of record of any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of the said board, and attested by the secretary thereof, directed

to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from Courts of Record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any Circuit Court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this State, and any officer or stockholder or any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State Prison for a period not exceeding two years, or by both such fine and imprisonment, in the discretion of the Court.

Section 149. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever and wherever in the State he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

Section 150. It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the Attorney General or any prosecuting attorney in the State to assist said board.

3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if found to exist.

4. To see that each county in the State be visited by at least one member of the board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

5. To require from any officer in this State, on forms prescribed by said Board of State Tax Commissioners such

annual or other reports as shall enable said Board of State Tax Commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the State under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

6. To inquire into and ascertain the valuation of the properties of corporations paying specific taxes under any of the laws of this State, and to ascertain the actual rate of taxation as based upon the valuation of said properties that is being paid by said corporations, and to this end said board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying under this act.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by pulished reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the legislature, at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

8. To further report to the legislature at each regular session thereof, or at such other times as the legislature may direct, the whole amount of taxes collected in the State for all purposes, classified as to State, county and township and municipal purposes, with the sources thereof; the amount lost; the causes of the loss; the pro-

ceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

9. To further report to the legislature at the beginning of the regular sessions, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the State, and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to re-arrange the rate or system of taxation on said properties, so that all taxable properties of the State may be taxed uniformly.

10. To be present at each meeting of the State Board of Equalization and furnish such information as said board may require, and that may assist said board in the performance of the duties imposed upon it by law.

Section 151. The Board of State Tax Commissioners shall, on or before the fifteenth day of December in each year, make an annual report to the Governor of this State, setting forth the workings of said commission during the preceding year and containing the findings and recommendations of said commission in relation to all matters of taxation. The Board of State Auditors shall cause five thousand copies of said annual report to be printed on or before the fifteenth day of January succeeding the making of said report. Three hundred copies of said report shall be placed at the disposal of the State Librarian for distribution and exchange.

Section 152. After the various assessment rolls required to be made under this act shall have been passed upon by the several boards of review, and prior to the time fixed

for equalization, and apportionment of State and county taxes, the said several assessment rolls in the State shall be subject to inspection by said Board of State Tax Commissioners or by any member thereof; and in case it shall appear, or be made to appear, to said board that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments or failure to assess is complained against, to appear with his assessment roll at a time and place to be stated in said order, said time to be not less than seven days from the date of issuance of said order, and the place to be at the office of the board of supervisors at the county seat or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided. A notice of the time and place that said assessor is ordered to appear with said roll, together with a statement of the persons whose property or whose assessments are to be considered shall be published in a newspaper published at the county seat of said county if there be one; if not in some paper printed in said county, if there be any, at least five days before the time at which said assessor is required to appear, and where practicable personal notice by mail shall be given to said persons prior to said hearing. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear

and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by the review of said assessments thus provided for may appear and be heard at said hearing. In case said board or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board or member thereof acting in said review, shall place the same upon said assessment roll by proper discription, and shall place thereafter, in the proper column, the true cash value of the same. In case of review under the provisions of this section, the said board or the member thereof acting in said review shall certify under his hand officially and spread upon said roll a certificate of the day and date at which said assessment roll was reviewed by him, and the changes by him made therein. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him in the preparation of his assessment roll, to be presented to and paid by the proper officers of the municipality of which he is the assessing officer, in the manner as his other compensation is paid. The action of said board or member taken as provided in this act shall be final.

Section 153. In case it shall appear or be made to appear to said board that any assessment roll in the State is so grossly irregular and unlawfully assessed that adequate compliance with the law cannot be secured except by a general review of said assessment roll, said board may make and issuse an order that said assessment roll shall

be subject to general review, and the time and place shall be stated in said order, at which said roll shall be reviewed, and under said order the assessor whose assessment or failure to assess is complained against shall be required to appear with his assessment roll at the time and place thus determined, said time to be not less than fourteen days from the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided for. A notice of the time and place that said assessor is required to appear with said roll, together with a statement that said roll will be subject to general review, and that all persons interested therein may be heard at said time, shall be published in a newspaper published at the county seat of said county, if there be one; if not, in some paper printed in said county, if there be any, at least seven days before the time at which said assessor is required to appear. A copy of the order made as aforesaid shall be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there review said assessment roll and may hear and determine complaints as to the said assessment roll and the assessments of property therein, and he or they shall have power to determine in accordance with law, the amount at which said assessments shall be placed, and to change the same, so that said assessments may comply with the law. Also to place upon said roll

property omitted therefrom in the same manner as provided in the last preceding section. The determination of said board or member thereof acting in said review shall place in a column provided for that purpose, and shall proceed in all respects as provided in the last preceding section, and the supervisor or assessing officer shall receive the same compensation as provided in said section.

APPENDIX D.

Provisions for the Assessment of Property.

1 Compiled Laws,

Section 3824. The People of the State of Michigan enact, That all property, real and personal, within the jurisdiction of this State, not expressly exempted, shall be subject to taxation.

Section 3831. For the purposes of taxation, personal property shall include:

1. All moneys;
2. All annuities and royalties;
3. All goods, chattels and effects within the State;
4. All ships, boats and vessels and their appurtenances belonging to inhabitants of this State, whether at home or abroad;
5. All goods, chattels and effects belonging to inhabitants of this State, situate without this State, except that property actually and permanently invested in business in another state shall not be included;

6. *All credits of every kind belonging to inhabitants of this State, over and above the amounts respectively owed by them whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State.*

Section 3841. It shall be the duty of each supervisor or other assessing officer as soon as possible after entering upon the duties of his office, or as may be directed and required by the provisions of any acts of incorporation of any city or village making special provision for such assessment, to ascertain the taxable property of his assessing district, and the persons to whom it should be assessed, and their residences. For this purpose he may require every person of full age and sound mind, who the supervisor or assessor believes has property which is not exempt from taxation, to make and subscribe to a true and correct written statement under oath, administered by such supervisor or assessing officer, or other officer qualified to administer oaths under the laws of this State, of all the taxable property of such person, firm or corporation, whether owned by him or it, or held for the use of another, and it shall be the duty of every such person, firm or corporation, to make such statement under the following form of oath, duly administered by the supervisor or assessing officer

Section 3842. In taking such assessment the supervisor or assessor shall use one of the following blank forms, as may be necessary :

Property of bankers and brokers. * * *

For pawnbrokers. * * *

Property of Companies,—The president, secretary, or principal accounting officer of any company or associa-

tion, incorporated or unincorporated, except railroad, insurance and telegraph companies and banking corporations, the taxation of which is specifically provided for by law, shall make out and deliver to the assessor a sworn statement setting forth the following:

1. The name and location of the company, corporation or association;
2. The amount of capital stock authorized and the number of shares into which the same is divided;
3. The amount of capital actually paid in;
4. The market value of the stock, or if they have no market value then the actual value of the shares of stock;
5. *The cash value of all its personal property, giving each kind separately as far as practicable;*
6. The total of all bona fide indebtedness, except indebtedness for current expenses, excluding from such expenses all amounts paid for the purchase or betterment of said property;
7. The description and value of all real property.

The amount of the seventh item shall be deducted from the amount of the fourth item, and the balance, if any, assessed as the cash value of the personal estate. *The amount of the sixth item shall be deducted from the amount of the fifth item, and the balance, if any, assessed as personal.*

Personal Property—Credits

1. All annuities and royalties;
2. All credits of every kind owing to such person, whether such indebtedness is due from individuals or from corporations, public or private, or whether debtors reside within or without this State, including all deposits in banks or with other corporations, or individuals, together

with a statement of any part thereof that is secured by real estate mortgage on lands situated in some other state;

3. All bona fide indebtedness owing by such person, giving an itemized statement in detail, how secured, and to whom owing and the residence of such creditors and the amount due each, *provided he desires to have the same deducted from his credits:*

Section 3847. On or before the third Monday of May in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. * * * He shall also estimate the true cash value of all the personal property of each person and set the same down opposite the name of such person.

